

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1965

No. 396

HUGO DEGREGORY, APPELLANT,

vs.

ATTORNEY GENERAL OF THE STATE
OF NEW HAMPSHIRE.

APPEAL FROM THE SUPREME COURT OF THE STATE
OF NEW HAMPSHIRE

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[fol. 1]

**IN THE SUPERIOR COURT FOR MERRIMACK
COUNTY, STATE OF NEW HAMPSHIRE**

**WILLIAM MAYNARD, Attorney General of the
State of New Hampshire,**

v.

HUGO DeGREGORY.

RESERVED CASE

This is a proceeding under N.H. RSA (Supp.) 588:8-a and N.H. RSA 491:20, the so-called Subversive Activities Act and the Superior Court contempt procedure utilized in such cases to compel testimony thereunder.

On November 22, 1963, before the Attorney General, and again on May 20, 1964, before the Superior Court for Merrimack County, upon being ordered to do so, Hugo DeGregory refused to answer a number of questions relating to the alleged existence of a Communist Party in New Hampshire and his activities therein, citing reasons therefor but specifically declining to invoke any constitutional privilege against self-incrimination.

The Court ordered:

May 20, 1964. Hugo DeGregory is found in contempt of this Court. Hugo DeGregory is ordered committed to the Merrimack County Jail and there to remain for a period of one year from this date or until he may purge himself of contempt. The petitioner is to stand committed. Pending appeal bail is set at \$1,000.00. Allowed to go on own recognizance.

DeGregory duly excepted to the admission of certain exhibits, questions, rulings and order of the Court, all of

which were duly noted, and will appear more particularly in the transcript.

All questions of law raised by the exceptions and these proceedings are reserved and transferred.

The original petition and answer thereto are to be printed as an appendix.

The transcripts of the November 22, 1963, hearing before the Attorney General, and the May 20, 1964, hearing before the Superior Court, and State's Exhibit 1 (Report of Attorney General to N.H. General Court on Jan. 5, 1955) shall be transferred without printing unless otherwise [fol. 2] ordered by the Court.

Reserved and transferred.

Martin F. Loughlin, Presiding Justice.

August 25, 1964

PETITION

Comes now William Maynard, Attorney General of The State of New Hampshire and respectfully represents:

1. That by provision of Chapter 307, Laws of 1953 as extended by Laws of 1955, Chapter 197 and RSA 588:8-a as inserted by Laws of 1957, Chapter 178, as said Attorney General your petitioner was directed by the Legislature of this State to investigate and report on subversive activities and the presence of subversive persons within the State of New Hampshire, make full and complete investigation of any violations of Chapter 588 of Revised Statutes Annotated, and that the conduct of this investigation and the proceedings thereunder have been delegated to petitioner by the Legislature of this State.

2. That pursuant to this authority and directive from the Legislature of this State, your petitioner issued a lawful subpoena to Hugo DeGregory, Hudson, New Hampshire, on November 12, 1963, which subpoena was duly

served in hand upon said Hugo DeGregory by Andrew J. Polak, Deputy Sheriff, Hudson, New Hampshire, on November 14, 1963, and that said subpoena directed the presence of Hugo DeGregory at Room 314, State House, Concord, New Hampshire at 10:00 A.M., on Friday, November 22, 1963; and that pursuant to said subpoena Hugo DeGregory then appeared as directed, at which time said Hugo DeGregory again declined to respond to questioning claiming that the petitioner had not laid a proper foundation. That at no time did said Hugo DeGregory exercise the privilege against self-incrimination as provided in the New Hampshire Constitution or avail himself of the grant of immunity provided in RSA 588:17 (supp.).

3. That under the provisions of said Chapter 588 the petitioner has no power to punish for contempt but must refer this witness to the Superior Court pursuant to the provisions of RSA 491:19, 20.

4. That transcripts in full of the proceedings of November 22, 1963 at the State House are available to the Court and will be furnished if so desired.

5. That as appears in said transcript, the refusal of the witness to answer the questions propounded is without legal foundation and contemptuous in the extreme.

6. That such questions are relevant to an investigation [fol. 3] of whether there are violations of the provisions of said Chapter 588 and it is contrary to settled legal authority to require petitioner to present a *prima facie* case to establish a probable cause for questioning.

Wherefore petitioner prays:

I. That pursuant to the provisions of RSA 491:20, this Court shall proceed in this matter as though the original proceedings had been in this Court and that the said Hugo DeGregory be adjudged to be in wilful contempt of this Court for the reasons aforestated.

II. That should the preceding prayer be denied that the same questions be propounded to Hugo DeGregory in the presence of the Court and that in the event he persists in refusal to answer that he be adjudged in contempt of this Honorable Court and that this Court make such orders in the premises as justice requires.

III. That in the event said Hugo DeGregory elects to proceed to answer questions put, that his questioning at least to the extent of the original transcript be completed in the presence of this Honorable Court in full and that any further questioning pursuant to the investigation authorized by said Chapter 588 of this witness take place in the presence of this Honorable Court.

Respectfully submitted,

William Maynard, Attorney General.

Duly sworn to by William Maynard, jurat omitted in printing.

January 10, 1964

Certificate of service (omitted in printing).

[fol. 4]

ANSWER

Comes now Hugo DeGregory, defendant in the above entitled petition, and makes answer as follows:

1. Defendant denies that paragraph 1 of the petition accurately states the law of New Hampshire as set forth in RSA, chapter 588, ss 8a.
2. Defendant admits the allegations of paragraph 2 of the petition.
3. Defendant admits the allegations of paragraph 3 of the petition.

4. Defendant admits the allegations of paragraph 4 of the petition, and requests that the petitioner be ordered to furnish the transcript therein referred to.

5. Defendant denies the allegations of paragraph 5 of the petition.

6. Defendant denies the allegations of paragraph 6 of the petition.

And Further Answering, defendant says that the summoning and questioning of defendant by petitioner as alleged in the petition was without proper legal foundation and a denial of due process of law to said defendant, pursuant to the terms of the Fourteenth Amendment to the United States Constitution. Defendant further alleges that petitioner is not in this proceeding engaged in any investigation which he is entitled to conduct under the provisions of RSA, chapter 588, ss 8a, and that he has shown no basis or probable cause for conducting said investigation.

Wherefore, Defendant Prays that the petition herein be dismissed, and for such other and further relief as may be necessary or advisable in the premises.

By his Attorneys,

Howard S. Whiteside, Lawrence J. Walsh, 18 Center St., Wolfeboro, N.H.

January 28, 1964.

Certificate of service (omitted in printing).

[fol. 5]

IN THE SUPERIOR COURT FOR MERRIMACK COUNTY

STATE OF NEW HAMPSHIRE

April Term 1964

#15,236

STATE OF NEW HAMPSHIRE THROUGH WILLIAM MAYNARD,
ATTORNEY GENERAL,

vs.

HUGO DeGREGORY.

Transcript of Hearing—May 20, 1964

Hearing in re above entitled matter held before Honorable Martin F. Loughlin, Presiding Justice, Merrimack County Superior Court, Concord, New Hampshire, May 20, 1964.

APPEARANCES

The parties were represented by counsel namely,

William Maynard, Esq., Attorney General, Joseph F. Gall, Esq., Assistant Attorney General, for the State.

Parkman, Robbins & Russell, Boston, Massachusetts, By: Howard S. Whiteside, Esq., Lawrence J. Walsh, Esq., Wolfeboro, New Hampshire, for Hugo DeGregory.

Ellen M. McCue, Stenographer.

[fol. 6] Mr. Maynard: May it please the Court, we are here on a petition which was filed, I believe, on January 13, 1964. We are here to seek the assistance of the Court in obtaining answers to certain questions which were propounded to Mr. DeGregory on November 22, 1963 by my office while carrying out the assignment given us by the Legislature to inquire into subversive activities in New

Hampshire. We propounded certain questions and the respondent declined to answer them. We ask the Court to, after giving Mr. DeGregory an opportunity to answer the questions, to find him in contempt if he doesn't answer the questions.

Would you take the stand Mr. DeGregory?

Mr. Whiteside: May it please the Court there are questions of law involved here which are raised in the answer of [fol. 7] the defendant in the case and at the appropriate time I wish to be heard on those questions.

Court: All right.

(Mr. DeGregory takes the stand.)

HUGO DEGREGORY, Hudson, New Hampshire called as a witness in his own behalf, being duly sworn, testified as follows,

Direct examination.

By Mr. Gall:

Mr. Gall: If it please the Court, I have in my hand a copy of the transcript of the original hearing held at the State House, Room 314, on November 22, 1963.

Q. Have you ever been a member of the Communist Party?

Mr. Whiteside: If the Court please, I object to the question, I wish to be heard at this time.

Court: All right.

Mr. Whiteside: If the Court please, I want to raise briefly the history of this investigation and the law on the [fol. 8] right of the Attorney General to investigate under the statute under which he purports to act. This is the third proceeding involving this defendant. The first one came in 1955 and Mr. Wyman then Attorney General summonsed the defendant in for questioning and at that time various questions of law were then raised which ended by

going to the U. S. Supreme Court and the State prevailed by a vote of six to three of the U. S. Supreme Court. The proceeding went back to the Superior Court of New Hampshire whereupon the Attorney General immediately filed a completely new proceeding and questions of law were raised to that proceeding. That went to the U. S. Supreme Court wherein the State prevailed by a vote of five to four. That went back to the Superior Court of New Hampshire. [fol. 9] The last of November in the Hillsborough County Court, Mr. DeGregory purged himself of contempt by answering the questions outstanding against him: "Are you presently a member of the Communist Party?" He answered that question in the negative. The Court then ordered him purged of contempt and he left the court house with no proceeding outstanding against him. Shortly thereafter, the present Attorney General issues a new subpoena for DeGregory to come in and answer questions and at that point we get to what is the foundation of the Attorney General's rights and power to summons in a witness to answer questions. As the Attorney General has said he is authorized by statute to investigate subversive activities but only under certain conditions, and the first condition is constitutional. [fol. 10] No man—no private person can be subjected to an investigation unless the state has overriding cause to make such investigation, in other words, a legislative investigating committee. The Attorney General can't just up and investigate with no substance no foundation at all, and we say that is what the Attorney General is doing in this case. Now with regard to the substance as held by the cases. Under the statute, the Subversive Activities Act, the right to investigate is the overriding right of the State of New Hampshire to protect itself from subversion. That is the basis on which the Attorney General can investigate. Where no subversive activities; no danger to the State of New Hampshire is shown then the Attorney General has no warrant to investigate. The legislative [fol. 11] Chapter 588:8-a has laid down the conditions of the Attorney General's investigating: that he must have

reasonable and reliable evidence of the violations of the Subversive Activities Act before he can go forward. In order to go forward at this point he must satisfy the Court—there are cases on this—he cannot proceed without satisfying the Court that he has the foundation and he has to show what it is, and to show probable cause to go forward with the investigation. Then, supposing he shows the probable cause; supposing he produces evidence here to satisfy the Court that there are as of now and in the recent past reasonable and reliable evidence of violations of the Subversive Activities Act, then he has to line up the defendant. He cannot just summons John Jones from the street [fol. 12] and say “Are you connected with the Communist Party?” “Are you connected with subversive activities?” He has to provide a foundation as to why he summonsed in John Jones and as to why he has probable cause to believe that John Jones can contribute to the investigation.

Now I don't know whether your Honor has read the transcript of the hearing before the Attorney General last November. In his petition the Attorney General said that was available and offered to make it a part of the record. In my answer I said it should be a part of the record and in that transcript can be found the crux of the matter of whether the Attorney General can proceed. On page 2 of that transcript I raised the question as to the Attorney [fol. 13] General laying a foundation and it is my belief in that whole transcript that he never did lay a foundation; he never produced evidence reasonable and reliable of violation of the act; he never justified his going forward to question the witness. And then as to the witness himself I inquired why he should be questioning Mr. DeGregory and he stated that he has considerable information about DeGregory as a member of the Communist Party in his file. He would not specify as of when. Mr. DeGregory made a sworn statement in the proceeding and I would like to read it in full. “I would like to state, Mr. Gall, that I am not now a member of the Communist Party and have not

been at any time since the authority you have cited, RSA 588:8-a; that I have no knowledge of any Communist activities "in New Hampshire during this period or of any violations of RSA 588 during this period of six and one-half years. In fact, I am not even aware of the existence of a Communist Party in the State of New Hampshire at any time the authority you have cited, section 8-a, has been on the statute books, and in view of the foregoing I do not understand what I have to face here today." And in the face of that sworn statement, the Attorney General produced nothing to contradict it. He made reference to the 1955 report of Mr. Wyman as Attorney General.

Now it is the law, your Honor, that an investigation based on a danger to the state, and that is what this has to be based on, it has to be based on a danger that the state is facing now. It is not a matter of what danger may [fol. 15] have existed ten or fifteen years ago, and if the Attorney General has any evidence of such a danger he must show that it is in the present or in the recent past rather than going back to the old papers handed down from Mr. Wyman's time. He must then contradict the sworn evidence of Mr. DeGregory. He must show something to counteract the sworn evidence if he is going to entitle himself to inquire of Mr. DeGregory as to communistic activities in New Hampshire.

In the case of Nelson vs. Wyman, which was the first case to pass on the Subversive Activities Act found in 99NH, a question was raised as to whether the Attorney General could make inquiry as to activities before 1951 when the Subversive Activities Act was first passed, and [fol. 16] the Court said he could because such questions were subsidiary to the main proceeding, the main proceeding being subversive activities in New Hampshire at the time the Attorney General was inquiring. All right now, if the Attorney General here can show the reasonable and reliable evidence of subversive activities today or in 1960, or even within the period of six years, the

statute of limitations, then you might rule that he was entitled to go back so long as his going back was subsidiary to the investigation of what might constitute a current threat to the State of New Hampshire and in the absence of showing a current threat to the State of New Hampshire he can't do anything, he can't do anything with the old material that Mr. Wyman left in the file and proceed [fol. 17] with it. I say that the Attorney General, to the best of my knowledge, is called upon by the statute when he makes an investigation to file a report with the Legislature. To the best of my memory no such file or report has been filed since 1955 by Mr. Wyman. If there is any evidence of subversive activities warranting a report to the Legislature it has not been shown since that time. I suggest to your Honor instead of shadow-boxing; instead of going behind unknown alleged sworn statements of unknown date; we can cut this proceeding short by calling on the Attorney General to submit to you the evidence which he believes is reasonable and reliable relating to violations of the act and to submit to you the evidence connecting the defendant with these activities and if he cannot submit these to you then the petition should be [fol. 18] dismissed as it is a waste of the time of the Court and is an infringement on the rights of the defendant, and I submit to you that the Court call upon the Attorney General to produce that evidence before he proceeds with this questioning.

Court: Brother Whiteside, the basis of your contention is on the statute of limitations?

Mr. Whiteside: Or on the investigating act itself, your Honor, which went into operation in June of 1957 and the defendant here has stated under oath that he has had no connection with communistic activities; no knowledge of them, since that statute was passed in June of 1957.

Court: Brother Gall.

Mr. Gall: Your Honor, with respect to the statute of limitations I cite State vs. Kinne 41NH 238 which states that: "The state is not bound by the provisions of a [fol. 19] statute by which any of its prerogatives, rights, titles or interests would be divested unless the statute be made by express words to extend to and include the State in its provisions." There is no such provision in the statute, your Honor.

Court: What about the foundation?

Mr. Gall: With respect to foundation, your Honor, in the transcript of November 22, 1963, the foundation is laid here and I understand that your Honor has a copy of this proceeding—virtually word for word of the same foundation that was laid in this court on June 28, 1960 which is the previous proceeding that Mr. Whiteside has been referring to, and at that time as is in the transcript here, the Attorney General referred to the June 19, 1955 report which the Attorney General had made to the New Hampshire [fol. 20] Legislature. I have a copy of it here which sets forth the background of Mr. DeGregory not only in this state but in other states. The Court at that time considered and made a judgment that the amount of foundation was substantial and it complied with RSA 588:8-a. If it please the Court, if I could refer to Wyman v. DeGregory 103 NH 214 at p. 216 where the Court at that time met some of the objections that Mr. Whiteside has made here today. And if I could quote: "It is the defendant's contention that the present statute no longer permits the Attorney General 'to determine whether subversive persons . . . are presently located within this state' since that language which appeared in the previous legislation (Laws 1953, c 307 and Laws 1955, cc 197 and 340) [fol. 21] does not appear in these words in RSA 588:8-a (supp) as enacted in 1957. . . . This statute does not require that there must be a violation of law before the legislative investigation can be set in motion. It only requires that there be reasonable and reliable information 'relating' to violations of the provisions of RSA ch. 588. The

statute specifically provides that the results of the investigation shall be reported to the Legislature together with the Attorney General's 'recommendations, if any, for legislation.' This clearly indicates that the Legislature has demanded a report as to whether further legislation in the field of subversive activities is required."

With respect to evidence that must be produced here, or [fol. 22] that the State must show there is danger, that is the opinion of counsel. There is no citation for it anywhere. This is a case that fits four square with every objection that has been posed previously in the 1955 report which was accepted by our court and the Supreme Court.

If the Court please, in addition to the 1955 report the State of New Hampshire wants to know who has been active with Mr. DeGregory; who was on the rolls of the Communist Party in the state; who was secretary; and whether any force or violence has been involved; the State desires to know whether he was a paid functionary of the Communist Party. The 1955 report states that. Sworn testimony was furnished to the committee that he was. The state wants to know who paid him and whether he [fol. 23] knew where the funds came from. In the files of this committee there is extensive documented sworn testimony to the effect that DeGregory had been active for a long time within the Communist Party within the state; that he has considerable information about persons who have been active in the conduct of communist affairs. The committee would like to know whether in fact he has been a part of the communist underground which existed in the late forties and fifties; where his assignments may have taken him and who directed him to go. It would like to know what information he has to seek to find out whether there has been any violation of the act and whether or not any of these acts should concern the Legislature to enact further legislation or not.

[fol. 24] Court: Do you propose to introduce as an exhibit the January 1955 report?

Mr. Gall: Yes, I do, your Honor.

Court: Brother Whiteside, I understand you agree to introduce as an exhibit without objection the transcript of the hearing held on November 22, 1963?

Mr. Whiteside: I not only agree, I urge it, your Honor, and if I may reply to my brother, Mr. Gall. I have a memorandum of law which gives citations as to what an investigating committee should have as a foundation. May I comment once again, the Attorney General is trying to go back to the middle fifties and before and not tie it to anything current at all. If he has the testimony let him produce it. What is he afraid of.

Court: Why don't you let the stenographer mark those exhibits.

Show Brother Whiteside the transcript.

[fol. 25] Mr. Whiteside: No objection to the transcript. Marked 1955 Report to General Court State's Exhibit #1.

Marked Transcript of Hearing November 22, 1963 State's Exhibit #2.

Court: Brother Whiteside, regarding Wyman v. DeGregory, 103 NH 214 at p. 217, I believe our Supreme Court at that time stated that there was reasonable ground laid for foundation through the introduction of this January 1955 report and on the basis of its decision I will now rule there has been a proper foundation laid and your exception may be noted.

Mr. Whiteside: Please note my exception, your Honor.

Court: Is there anything further you wanted to say, Brother Whiteside, before Brother Gall proceeds?

Mr. Whiteside: Not at this time, your Honor.

Mr. Gall: Does the Court desire that I repeat the question that was asked of Mr. DeGregory?

[fol. 26] Court: Yes.

Q. Have you ever been a member of the communist party?

A. I must decline to answer the question, Mr. Gall, for all the reasons given by my attorney, also because I have heard no claim made by the Attorney General to the effect that he has information relating to violations which involves me. Furthermore, I would like to say at this time, Mr. Gall, it has been ten years that I have been faced with these accusations and I think that after ten years the state should stop hiding behind baseless information. If it has derogatory information against me, I would like to know who made this information, when it was made, and I would like an opportunity to face my accusers in open court. Beyond that, I have no further comment except that I decline for all the reasons cited here in my behalf.

Mr. Whiteside: Before going on, may I consult with the witness.

(Attorney Whiteside confers with witness.)

Witness: Your Honor, could I add something to that.

I would like to repeat the statement that I made at the [fol. 27] hearing on November 22nd, that I am not now a member of the Communist Party and have not been at any time since this authority under which I was subject has been on the statute books; that I have no knowledge of any communistic activities in New Hampshire during this period, or any violations of law during this period of six and one-half years. In fact, I have not even been aware of the existence of any Communist Party in the State of New Hampshire at any time that this authority has been on the statute books. In view of the foregoing, I do not understand what I have to face here today.

Mr. Gall: Your Honor, I respectfully request the Court that the witness be directed to answer the question.

Court: Do you invoke your right against self incrimination?

Witness: I do not, your Honor.

Court: You refuse to answer the question?

Witness: I decline to entertain the question for the reasons I have given.

Mr. Gall: Your Honor, may I proceed with some additional questions?

Court: Yes.

[fol. 28] Mr. Gall: May I respectfully request the Court to ask Mr. DeGregory the question that I have asked him?

Court: Do you want to read the question back to me?

(Question read back)

Court: Mr. DeGregory, the Court orders you to answer the question: "Have you ever been a member of the Communist Party?"

Witness: I must respectfully decline for the reasons I have given, your Honor.

Court: You do not invoke the right against self incrimination?

Witness: I am not.

Court: We will take a short recess.

After recess.

(Mr. DeGregory resumes the stand)

Mr. Maynard: May it please the Court, the State would like to proceed to ask additional questions of the respondent. We face some sort of a dilemma. Before we asked [fol. 29] or one of my predecessors asked the question of the respondent "Are you presently a member of the Communist Party?" Some years later, and apparently the question became somewhat obsolete by that time, he purged himself of contempt. If there should be an appeal from whatever the Court should find and again the respondent purges himself of contempt then it may take years in order to complete the investigation of Mr. DeGregory and bring the matter to an end unless we are allowed to proceed to ask the questions. The law seems frustrated to a certain extent. I would like the privilege of going on with other questions.

Court: All right.

Mr. Gall: May it please the Court.

Q. When did you join the Communist Party?

A. My answer remains the same, Mr. Gall.

[fol. 30] Mr. Gall: It is respectfully requested that Mr. DeGregory be directed to answer the question, your Honor.

Court: Mr. DeGregory, the Court orders and directs you to answer the question: "When did you join the Communist Party?"

Witness: I must decline to do so, your Honor.

Court: Do you invoke the right against self incrimination under the Fifth Amendment?

Witness: I do not.

Q. Were you a paid member of the Communist Party?

A. My answer remains the same.

Court: Mr. DeGregory, the Court orders and directs you to answer the question: "Were you a paid member of the Communist Party?"

Witness: I must respectfully decline.

Court: Do you invoke your right under the Fifth Amendment?

Witness: No, I do not.

Q. Were you an officer of the Communist Party?

[fol. 31] A. I must decline that question also.

Court: Mr. DeGregory, the Court orders and directs you to answer the question: "Were you an officer of the Communist Party?"

Witness: I must decline to answer the question for the reasons stated.

Court: Do you invoke your right against self incrimination?

Witness: I do not.

Q. Did you ever have access to or control of membership or financial records of the Communist Party in New Hampshire?

A. I must decline to answer that question.

Court: The Court orders and directs you to answer the question: "Did you ever have access to or control of membership or financial records of the Communist Party in New Hampshire?"

Witness: My answer remains the same, your Honor.

Q. Did you attend Communist Party meetings in New Hampshire?

[fol. 32] A. I must decline to answer that question for the same reasons.

Court: The Court orders and directs you to answer the question as to whether or not you attended any communist meetings in New Hampshire.

Witness: I must continue to decline, your Honor.

Court: You don't invoke the Fifth Amendment?

Witness: No, I do not.

Q. To what extent did Communist Party District I in Boston, Massachusetts, have control over the party's activities in New Hampshire?

Mr. Whiteside: I would like to know as to what period the inquiry is made.

Court: Does the Attorney General wish to state what period he is referring in his question?

Mr. Gall: Your Honor, the 1955 report has been admitted into evidence and has been accepted as laying a foundation, and in addition the statement here has been [fol. 33] provided as to foundation and the background of this man's activities, and associations with the Communist Party. Based on information that is in the report, your Honor, which is already admitted into evidence, Mr. DeGregory is listed as being a member of the Communist Party as early as 1937.

Mr. Whiteside: May it please the Court, I merely asked what period the question is limited to. May I interject at this time the exhibit of 1955 was admitted before I could

object. I want my specific objection to that admission registered.

Court: Your exception is noted to that, Brother White-side.

Mr. Gall: Your Honor, based on the information that is in the report covering that period of years, which is any period during the period that is reflected in the report.

[fol. 34] Court: I will allow the question. Did you understand the question?

Witness: Not quite, your Honor.

Court: What was the question, Mr. Gall.

Q. To what extent did Communist Party District I in Boston, Massachusetts, have control over the party's activities in New Hampshire?

A. I must decline for the same reasons I have given.

Court: Do you understand the question, Mr. DeGregory?

Witness: Yes, I think I do.

Court: The Court orders and directs you to answer the question: "To what extent did Communist Party District I in Boston, Massachusetts, have control over the party's activities in New Hampshire?"

A. I must decline, your Honor.

Court: You do not invoke the Fifth Amendment?

Witness: No, I do not.

Q. Did you ever attend any Communist Party meetings in New Hampshire wherein any person advocated to overthrow the—overthrow, destroy or alter the Government of [fol. 35] the State of New Hampshire, by force or violence?

A. I must decline to answer that question also.

Court: Do you understand the question?

Witness: Yes, I do.

Court: The Court orders and directs you to answer it.

Witness: I must continue to decline. I do not invoke the Fifth Amendment.

Q. Did you ever attend any Communist Party meetings in New Hampshire where any person advocated, abetted,

advised or taught by any means the commission of an act to constitute a clear and present danger to the security of this state?

A. Well, since that question calls upon me to make a judgment I will do so. I cannot see how activities of non-existent organization can constitute a clear and present danger to the State of New Hampshire. To that extent I will answer that question.

Q. I ask you, sir, did you ever attend any Communist Party—

A. —I must decline to answer that.

Q. Have you answered that question to the best of your ability?

A. In the context of this hearing, yes.

[fol. 36] Court: I am going to allow the question.

Mr. Whiteside: Your Honor, I might point out in the previous question asked: "Did you ever attend any Communistic Party meetings in New Hampshire?" The witness has declined to answer that.

Court: I realize that.

Q. At any such meeting did one or more persons conspire to commit any such act?

A. Mr. Gall, I asked you if you were speaking about violations of law to present some evidence. You have not done so, therefore, I must decline to answer the question. I am being linked directly with the violation of the law here, but I have yet to hear any claim on your part that you have such evidence. Therefore, I must decline to answer that question.

Court: You understand the question?

Witness: I certainly do.

Court: The Court orders and directs you to answer the question.

Witness: I must continue to refuse.

Court: Do you want to invoke the Fifth Amendment?

[fol. 37] Witness: I do not, sir.

Q. Did you or any person known to you destroy any books, records or files, or secrete any funds in this state belonging to or owned by the Communist Party?

A. I must again decline to answer for the reasons given.

Court: Do you understand the question?

Witness: I do.

Court: The Court orders and directs you to answer.

Witness: I must continue to decline.

Court: You do not invoke the Fifth Amendment?

Witness: I do not, sir.

Q. Did you at any time participate or assist in the formation of or contribute to the support of the Communist Party in New Hampshire?

A. I must decline to answer that question.

Court: Do you understand the question?

Witness: I do, sir.

Court: The Court orders and directs you to answer it.

Witness: I must continue my refusal to answer this question.

Court: You do not invoke the Fifth Amendment?

[fol. 38] Witness: I do not.

Mr. Gall: I have no further questions. Your Honor, it is respectfully requested that the witness be herein found in contempt of the Court.

Court: Brother Whiteside.

Mr. Whiteside: Well, I have asked Brother Walsh to speak at this time in response to the Attorney General's request.

Mr. Walsh: Your Honor, proceeding on the assumption that the Court will grant the Attorney General's request and find Mr. DeGregory in contempt, I'd like to recite a little background as to what has happened in the past. In each instance following the citation of contempt, Mr. DeGregory has been incarcerated in the county jail on both occasions for a period of approximately three weeks each, [fol. 39] during which his then New Hampshire counsel

sought the establishment of bail. Since Mr. DeGregory has appeared voluntarily for the last ten years before the Court and before the Attorney General, I respectfully request in this particular instance, in as much as appeal will be taken, that this Court find in its prerogative and in its province, even though he be found in contempt of this Court, to allow Mr. DeGregory to be released on his own recognizance. The Court has our assurance that Mr. DeGregory will appear at any future hearing pending appeal.

Court: I think that may be premature at this time. You may renew your motion.

Mr. Walsh: Yes, sir.

Clerk: Hugo DeGregory, the Court has made the following decree: May 20, 1964. Hugo DeGregory found in contempt of Court. Hugo DeGregory is ordered committed to the Merrimack County jail and there to remain for a period of one year from this date, or until he may purge himself of contempt. The petitionee is to stand committed pending appeal. However, bail is set at \$1,000.00, and you are allowed to go on your own recognizance.

[fol. 41]

STATE'S EXHIBIT #1

SUBVERSIVE ACTIVITIES IN NEW HAMPSHIRE

REPORT OF THE ATTORNEY GENERAL

TO

THE NEW HAMPSHIRE GENERAL COURT

Pursuant to Laws 1953, Chapter 307

January 5, 1955

LOUIS C. WYMAN

Attorney General

* * * * *

[fol. 42]

HUGO DeGREGORY**Background**

Hugo DeGregory was born in San Francisco, California, in 1914, and completed high school in New York City. In the 1930's, he resided in Springfield, Massachusetts. He served in the U. S. Army from 1941-1945, receiving an honorable discharge. After World War II he lived in Boston and Worcester, Massachusetts, coming to New Hampshire in 1950. Since then he has lived in Nashua periodically, and currently resides on Moody Street, Hudson, New Hampshire. DeGregory is married to the former Louise Dobrowolski.

Results of Investigation**Reported Communist Party Affiliation**

The report of the Massachusetts Commission which investigated subversive activities in that state in 1937 listed DeGregory as a member of the Massachusetts State Committee of the Communist Party in 1937. He was then residing in Springfield.

The report also had the following to say about DeGregory: "Organizer for the Communist Party, particularly the Young Communist League. He attended the Party's national training school..." Records of the House Committee on Un-American Activities revealed that DeGregory was Communist Party candidate for Lieutenant Governor of Massachusetts in 1940. According to the "Daily Worker" of June 22, 1944, page 7, Hugo DeGregory was a member of the Communist Political Association.

On Communist Party letterhead stationery of date December 5, 1945, Hugo DeGregory, Secretary-Treasurer of the Communist Party, District No. 1, Boston, Massachusetts, was authorized to sign checks on behalf of the Communist Party.

On letterhead stationery of the Communist Party of Massachusetts dated January 4, 1946, Hugo DeGregory was

authorized to open a savings account for the Communist Party of Massachusetts. The letter was signed by DeGregory as Secretary of the Communist Party of Massachusetts.

In October 1946, Hugo DeGregory was listed as Secretary-Treasurer of the Communist Party in New England,

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[fol. 43] with headquarters in Boston, Massachusetts, on stationery of the Communist Party of New England.

On October 7, 1946, DeGregory was replaced as Secretary-Treasurer of the Communist Party of Massachusetts.

A former confidential informant of the Federal Bureau of Investigation provided information that he had met DeGregory at Communist Party headquarters in Boston at various times during the 1946-1949 period.

This office has received information from a reliable source that in 1948 Hugo DeGregory was a paid employee of the Communist Party, which information he refused to affirm or deny when questioned in this state's probe.

A witness who was closely associated with the Communist Party in Nashua testified that he had information from a member of the Communist Party that Hugo DeGregory was a paid employee of the Communist Party, and that this member had seen DeGregory at Communist Party meetings in Nashua in the late 1940's.

A former member of the Communist Party in New Hampshire testified that he had known Hugo DeGregory as an official of the Communist Party prior to 1946 and that DeGregory came to New Hampshire to preside over Communist Party meetings as an official as late as 1948, and that these appearances of DeGregory were sporadic.

William H. Teto, another former confidential informant of the Federal Bureau of Investigation, testified that Hugo DeGregory was known to him as a district official of the Communist Party who had attended a meeting of the National Committee of the Communist Party about 1948, and that DeGregory made a so-called security check of the Communist Party membership in 1949. The same witness testi-

fied that Hugo DeGregory attended a Marxist school with him in Boston, Massachusetts, and that when the Communist Party went underground, DeGregory moved to New Hampshire. The same witness testified that DeGregory was a "paid functionary" of the Communist Party in the 1940's.

Another former member of the Communist Party in New Hampshire testified that Hugo DeGregory attended a State Convention of the Communist Party with him at the Dobrowski residence in Nashua in the fall of 1950.

An admitted former member of the Communist Party in New Hampshire testified that Hugo DeGregory called on

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[fol. 44] him at his home in New Hampshire in the company of Elba Chase Nelson on Communist Party business in the spring of 1953 and sold him some Communist literature, which may have included Stalin's last statement. The literature was not available for examination.

Information from a reliable source has been received which revealed that on August 5, 1954, DeGregory was contacted by Tony Passaretti of Lawrence, Massachusetts. Passaretti has been identified as a Communist Party member in the late 1940's by William H. Teto. The significance of this contact was not established.

Testimony of Hugo DeGregory

At the outset of his testimony on July 12, 1954, Hugo DeGregory read a prepared statement charging that the law on which this investigation was based was both unjust and unconstitutional, that the investigation was a witch-hunt, that it was a fraud; that there was a plot of a "McCarthy gang" in New Hampshire. Later he charged that the state "apparatus" being what it was, it was very difficult to get any action on fascist activities. He freely made accusation of fascist activity, but offered no information to back up his unfounded accusations, and would say absolutely nothing concerning his possible knowledge of Communist activities. This line is reiterated constantly in the Communist "Daily Worker." DeGregory resorted to the constitutional provision against self-incrimination in refusing to say if he was a Communist Party member.

MRS. LOUISE DeGREGORY

Background

Mrs. Louise DeGregory was born Louise Wanda Dobrowolski in Nashua, New Hampshire. Her parents are Kathryn and Konstanti Dobrowolski, and her present husband is Hugo DeGregory. She graduated from Nashua High School and now resides on Moody Street, Hudson, New Hampshire. Mrs. DeGregory is an accomplished accordian player. Testimony has identified Konstanti Dobrowolski and Kathryn Dobrowolski, and Hugo DeGregory, as members of the Communist Party in the past.

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[fol. 45]

STATE'S EXHIBIT #2

Hearing held November 22, 1963

State House, Room 314

Concord, New Hampshire 10:00 A.M.

Present: William Maynard, Attorney General
Joseph F. Gall, Special Assistant
Howard S. Whiteside, Esq.
Hugo DeGregory
N. E. Douillette, Stenographer

All questioning by Mr. Gall, unless otherwise indicated.

Q. Mr. DeGregory, will you raise your right hand?

Witness sworn.

Q. What is your name, sir?

A. My name is Hugo DeGregory.

Q. And your address?

A. Moody Street, Hudson.

Q. Will counsel identify himself for the record?

Mr. Whiteside: Howard S. Whiteside, 30 State Street,
Boston, Massachusetts.

Q. And you are representing Mr. DeGregory?

Mr. Whiteside: I am.

Q. Mr. DeGregory, by the provisions of New Hampshire Revised Statutes Annotated, 588:8-a, the Attorney General has been directed by the Legislature of this state to make a full and complete investigation of violations of the provisions of RSA 588 within the state of New Hampshire whenever there is reasonable and reliable information relating to the same and based on the investigation recommendations, if any, are submitted to the Legislature.

Have you ever been a member of the Communist Party?

[fol. 46] Mr. Whiteside: At this point I would like to make a statement, Mr. Gall. Before asking any questions of that nature you have to lay a foundation.

Q. Are you advising that we have to?

Mr. Whiteside: I am advising that you have to. I am advising that you are not entitled to proceed until you have laid a foundation and shown you have reasonable and reliable information relative to violations of the Act and that such information pertains to the witness in such a way that you are entitled to go forward with the questioning of him.

Q. Well, Mr. Whiteside, I think you already are familiar with the fact that the courts of this state have already acted and decided on this particular point?

Mr. Whiteside: I am quite aware that on March 20, 1961 the Court held that in February of 1960 you did have such reasonable and reliable information. This now is three and one-half years later. We have an absolutely new proceeding and we stand on what I have said.

Q. Well, you are—at this point then you are objecting.

Mr. Whiteside: I challenge the prerogative of the Attorney General as a legislative committee to go forward.

Q. You are challenging RSA 588:8-a?

Mr. Whiteside: I am not challenging the validity of RSA 588:8-a. I am challenging the validity of this legislative committee to go forward with this information without such a foundation as I have indicated.

Q. Very well, though there is some question as to whether it is necessary or not, we will proceed with the following:

There are certain sources in our society that would have us believe that the world has changed since a decade ago and that part of the present Communist Party line which embraces the concept of peaceful coexistence means that there isn't any longer in this country any need to keep abreast of Communist activities in this state and in this nation. In fact, what they say, or what some say, is that the information is no longer important. All of the com-[fol. 47] placency and the apathy and indifference on the part of the people cannot change for a moment the fact that everyone underneath is uneasily aware of what Karl Marx has said, that the war between Communism and capitalism is inevitable.

The preamble to the report of the Attorney General to the New Hampshire General Court, which report is dated January 5, 1955, in the Foreword contains an AP wire story from Elba Chase Nelson, the head of the Communist Party in this state in the late forties, to the effect that she was in accord with the views of William Foster and Eugene Dennis that in the event of war American Communists would cooperate [quote] with all democratic forces to defeat the predatory war aims of American imperialists. [End of quote]

It is felt that as a matter of law that a foundation here is not necessary. However, within the files of this committee there is extensive documented sworn testimony to the effect that Hugo DeGregory has been for a long time active within the Communist Party within this state.

Mr. Whiteside: Excuse me, Mr. Gall, may I interject a question, are you reading from the 1955 report?

Mr. Gall: I am reading information which lays a foundation for it.

Mr. Whiteside: Yes, but are you reading an excerpt from the 1955 report?

Mr. Gall: I am not reading from—

Mr. DeGregory: May I ask a question?

Mr. Gall: Do you want your counsel to ask it?

Mr. DeGregory: Can you date this information? What year are you talking about?

Mr. Gall: If you want to object to it you may. If you have an objection you can state it on the record, and we'll proceed now with the record:

And that he has considerable information about the persons who also have been active in the conduct of the Party's [fol. 48] affairs and the committee would like to know what information he has in seeking to find out whether or not there have been any violations of RSA 588 and whether or not any of those facts should concern the Legislature to enact further legislation or not. The 1955 report, previously cited, has been referred to in all cases in this investigation and actually was made after 1954, when in *Elba Chase Nelson v. Wyman* the basic subversive activities law of 1951 was upheld as constitutional.

It is submitted that there is no burden upon the Attorney General, acting as a committee, to offer to the witness that there is a reasonable basis for requiring the testimony. There is nothing further necessary than to establish probable cause to the question. It has been reported under oath that this witness has been a functionary and long-time active member of the Community Party. The Legislature of New Hampshire has determined as a matter of decision to keep abreast of Communist Party activities no matter what the Legislature in the other states may elect or decide to do and the Supreme Court of the United States has said that is something which is our business so long

as we do it constitutionally. In accordance with this legislation, so long as the questions are relevant to the investigation and concern "the security of the nation and this state, there is an obligation to answer these questions. A number of the questions in this proceeding are to find out whether there have been violations of RSA 588 and as defined in that Act, to determine whether subversive persons are located within the State of New Hampshire. The New Hampshire Legislature has directed the Attorney General to obtain this information, which is important to this state.

Mr. Whiteside: Now, sir, I will state that it is our position that unless you can show reasonable and reliable information relating to violations of the act within the period of the statute of limitations that you are not entitled to go forward on a statement such as you have just made, which does not tie to any date the information which you say you have, and which is just the same kind of statement Mr. Wyman made in 1957 and in 1960 and all the [fol. 49] information that was requested at that time had to do with a period of not less than seven years ago, and in order to make our position completely clear, Mr. DeGregory has a statement to put on the record.

Mr. DeGregory: I would like to state, Mr. Gall, that I am not now a member of the Communist Party and have not been at any time since the authority you have cited, RSA 588:8-a; that I have no knowledge of any Communist activities in New Hampshire during this period or of any violations of RSA 588 during this period of six and one-half years. In fact, I am not even aware of the existence of a Communist Party in the state of New Hampshire at any time the authority you have cited, section 8-a, has been on the statute books, and in view of the foregoing I do not understand what I have to face here today.

Mr. Gall: Well, we have some questions to ask you. Have you ever been a member of the Communist Party?

Mr. Whiteside: I advise the witness not to answer that question on the basis I have stated, and on the basis which the witness himself has stated, you have not laid a foundation.

Mr. Gall: If you will permit Mr. DeGregory to answer the questions. If you want to advise him it is all right.

Mr. Whiteside: I do. In other words, Mr. DeGregory may answer for himself.

Mr. DeGregory: My response to that question would be that you have not laid the foundation. I see no relation of this question to any violation of the statute.

Mr. Gall: Were you a Communist Party member on June 28, 1960?

A. I have already answered that question, Mr. Gall.

Q. When did you join the Communist Party?

A. On advice of counsel, I am not proceeding until you lay a foundation and you have not laid it to either my satisfaction or Mr. Whiteside's.

[fol. 50] Q. Were you a paid member of the Communist Party?

A. May I consult with counsel, Mr. Gall.

Q. Take any time you want to.

A. We don't need any more time, Mr. Gall. The answer is the same.

Q. Were you an officer of the Communist Party?

A. Mr. Gall, will you place that in what time, what year are you speaking about?

Q. I am just asking the question generally.

A. You don't care if it is thirty years ago or today?

Q. That's the question and if you would answer it?

A. I am going to give the same answer.

Q. Did you ever have access to or control of membership or financial records of the Communist Party in New Hampshire?

A. What year, Mr. Gall.

Q. I have asked the question.

A. My reply will be the same.

Q. Did you attend Communist Party meetings in New Hampshire?

A. What year are you referring to, Mr. Gall.

Q. At any time?

A. My answer is the same.

Q. To what extent did Communist Party District One in Boston, Massachusetts have control over the Party's activities in New Hampshire?

A. My answer is the same.

[fol. 51] Q. Did you ever attend any Communist Party meetings in New Hampshire where any person advocated to overthrow, destroy or alter the government of this state by force and violence?

A. What year do you have reference to, Mr. Gall.

Q. At any time?

A. My answer will be the same.

Q. Did you ever attend any Communist Party meetings in New Hampshire where any person advocated, abetted, advised or taught by any means the commission of an act to constitute a clear and present danger to the security of this state?

A. I have stated under oath, Mr. Gall, that I have no knowledge of any Communist activity during the period of the authority you have cited here; I have no knowledge of any violations of the law, and my answer is the same, you have not laid a foundation.

Q. At any such meeting did one or more persons conspire to commit any such act?

A. I have already testified regarding my knowledge of violation of the laws.

Q. Did you or any person known to you destroy any books, records or files, or secrete any funds in this state belonging to or owned by the Communist Party?

A. What year do you have reference to.

Q. At any time?

A. I have answered, you have not laid a foundation.

Q. Did you at any time participate or assist in the formation of or contribute to the support of the Communist Party in New Hampshire?

A. My answer remains the same.

Q. Will your answer be the same to any subsequent questions we may ask?

A. That's a hypothetical question, Mr. Gall.

[fol. 52] [Five-minute recess while Mr. Maynard out of room]

Mr. Maynard: I was going to say, I wasn't clear on I think parts of your answers to two questions, Mr. DeGregory, to the effect that you had no knowledge of any violations of the law, and whether you refer to the period since the passage of the act or for all time?

A. I am referring to the period—I am here under law, a lawful subpoena which refers to RSA 588:8-a. This is through 1963 and I believe any information you have must relate to 1963 but I am willing to go to the time, the first day this was put on the statute books, which was the 14th of June 1957, and in my answer I stated that during this entire period this statute, RSA 588:8-a, has been on the statute books I have not been a member of the Communist Party and I have no knowledge of Communist activities during the period it has been on the statute books, the authority stated in the subpoena, and therefore I cannot see the relevancy of my appearance here or any questions in view of my lack of knowledge during the period you have cited.

Mr. Maynard: You are not saying you are not guilty of any violation of law prior to the passage of this act?

A. I am confining my remarks, Mr. Maynard, entirely to the period of authority cited in this subpoena. I am trying to meet this subpoena. I am not meeting anything else because many of the things referred to in past reports have referred to matters twenty-five or thirty years ago, matters entirely outside the jurisdiction of the state of New Hampshire. And I am not sure about matters going

back that far because they are all questions totally removed from the authority under which you have subpoenaed me today.

Mr. Maynard: I think that covers my point.

Mr. Gall: Do you have any other statements?

Mr. Whiteside: I think we have made clear for the record that we are challenging your authority to go forward.

Mr. Gall: You mean the State's basis?

A. Yes, this investigating committee.

Mr. Gall: I have no additional questions but you will remain under subpoena, Mr. DeGregory.

Mr. Whiteside: For how long?

Mr. Gall: We will advise you, sir.

[fol. 53]

IN THE SUPREME COURT OF THE STATE
OF NEW HAMPSHIRE

Merrimack,
No. 5298.

WILLIAM MAYNARD, Attorney General

v.

HUGO DE GREGORY

Argued January 5, 1965.

OPINION—Decided April 30, 1965.

Petition under RSA 491:19, 20 to compel the defendant to answer certain questions asked him in a legislative investigation of subversive activities by the Attorney General pursuant to the provisions of RSA 588: 8-a (supp).

When directed by the Trial Court (*Loughlin, J.*) to answer the propounded questions, defendant refused. He informed the Court he was not invoking his privilege against self incrimination. The Court adjudged him in

contempt and ordered him committed to jail for a period of one year or until he purged himself of contempt. However, he was released on his own recognizance pending this appeal.

William Maynard, Attorney General, *R. Peter Shapiro*, Assistant Attorney General, and *Joseph F. Gall*, Special Assistant to the Attorney General (*Messrs. Shapiro and Gall orally*) for the Attorney General.

Lawrence J. Walsh and *Howard S. Whiteside* (of Massachusetts) (*Mr. Whiteside orally*), for the defendant.

Lampron, J. The first issue raised by the defendant is whether under the circumstances of this case the Attorney General has power under RSA 588: 8-a (supp) to question him and whether the Superior Court has power to commit him for his refusal to answer the questions asked.

RSA 588:8-c (supp) reads in part as follows: "At any time when the Attorney General has information which he deems reasonable or reliable relating to violations of the provisions of this chapter he shall make full and complete investigation thereof and shall report to the General Court the results of this investigation, together with his recommendations, if any, for legislation."

We held in *Wyman v. De Gregory*, 103 N.H. 214, 216, 217, that this "statute does not require that there must be a violation of law before the legislative investigation can be set in motion. It only requires that there be reasonable and reliable information 'relating' to violations of the provisions of RSA Ch. 588" relating to subversive activity [fol. 54] ties. This judgment was affirmed by the United States Supreme Court. *De Gregory v. Attorney General of New Hampshire*, 368 U.S. 19. That Court, as recently as March, 1963, reaffirmed the broad inherent power of a Legislature to conduct investigations "concerning the administration of existing laws as well as proposed or possibly needed statutes." *Gibson v. Florida Legislative Investigation Com.*, 372 U.S. 539, 545. See Annot. 3 L. Ed. 2d 1647, 1650.

The defendant argues, however, that the Attorney General did not comply with RSA 588:8-a (supp) in that he failed to show (1) that he "has information which he deems reasonable or reliable relating to violations of the provisions of" RSA ch. 588, and (2) that he has reasonable cause to believe that the defendant has evidence pertinent to the subject under investigation.

It has long been recognized that the tenets of the Communist Party include the overthrow of government by force and violence. *Nelson v. Wyman*, 99 N.H. 33, 50; *Barenblatt v. United States*, 360 U.S. 109, 128. That the State of New Hampshire has an interest in the preservation of its government against the menace of Communist subversion is firmly established. *Nelson v. Wyman*, *supra*; *Gibson v. Florida Legislative Investigation Com.*, 372 U.S. 539, 547. Furthermore our Legislature has manifested a continuing concern to be kept informed by its investigating committee, the Attorney General, as to the need of "further legislation in the field of subversive activities." *Wyman v. DeGregory*, 103 N.H. 214, 217; RSA 588:8-a (supp); Laws 1961, 224:1 (p. 311) and 225:1 (p. 402); Laws 1963, 198:1 (p. 201) and 199:1 (p. 298).

In the present proceeding instituted in 1963 the Attorney General introduced in evidence a report to the Legislature, made by a prior Attorney General, showing the existence of a Communist Party and Communist influence in New Hampshire and the probable continuance of such activities in our state. Report of the Attorney General to New Hampshire General Court (January 5, 1955). In prior proceedings beginning in February 1960, the Attorney General attempted to obtain information from the defendant, which he is still seeking in the present proceedings. We hold that given the nature of the Communist movement and its mode of operation the above report could constitute information which the Attorney General could deem reasonable or reliable relating to violations of RSA ch. 588 and the proper basis for his present investigation of subversive activities

on behalf of the Legislature. *Wyman v. De Gregory*, 103 N.H. 214, 217; *De Gregory v. Attorney General of New Hampshire*, 368 U.S. 19; *Gibson v. Florida Legislative Investigation Com.*, 372 U.S. 539, 547.

It was also stated in the above report that the then Attorney General had reliable information concerning defendant's participation in the Communist Party as an officer, a presiding officer at conferences in New Hampshire, and in numerous other party activities. (pp. 204-206). When questioned by the Attorney General on November 22, 1963, and also in the Superior Court in the hearing which is the basis of this appeal, the defendant made the following [fol. 55] statement: "I am not now a member of the Communist Party and have not been at any time since the authority you have cited, RSA 588:8-a; that I have no knowledge of any Communist activities in New Hampshire during this period or of any violations of RSA 588 during this period of six and one-half years." Even if taken at its face value, this statement does not render otherwise proper and pertinent information regarding his prior contacts and involvements with the Communist Party and its members in this State beyond the legitimate interest and jurisdiction of the Attorney General acting as the investigating committee of the Legislature. *Nelson v. Wyman*, 99 N.H. 33, 39; *Uphaus v. Wyman*, 360 U.S. 72, 78.

We hold, as we did in *Wyman v. De Gregory*, 103 N.H. 214, 217, that the Attorney General had reasonable and reliable information relating to violations of RSA ch. 588 which provided a valid and relevant basis for the investigation of the defendant. We hold further that the Superior Court could properly hold the defendant in contempt under RSA 491:19, 20 for his refusal to answer whether he was ever a member, a paid member, or an officer of the Communist Party; if he ever had access to or control of membership or financial records of the Party in New Hampshire or attended Party meetings; the extent of control of the Party activities in this state exerted by a Party unit in Boston of which he is alleged to have been an officer; if he

attended Party meetings in New Hampshire where advocacy of the overthrow of the Government took place or persons conspired to so do; also questions as to his knowledge about the books, records or files of the Party in this state and about his contributions to its support. *Uphaus v. Wyman*, 360 U.S. 72; *Barenblatt v. United States*, 360 U.S. 109; *Wilkinson v. United States*, 365 U.S. 399; *Braden v. United States*, 365 U.S. 431.

Defendant's last contention is that if RSA 588:8-a (supp) is held to empower the Attorney General in the circumstances of this case, to require defendant to answer questions, this statute is in contravention of the Fourteenth Amendment. This is for the reason, in the words of his brief "that the danger to the State, which must be present to warrant action under a statute like c. 588, s. 8A has not been shown to exist at any time during plaintiff's current attempts to question defendant or in fact for years prior thereto."

As we have stated previously in this opinion the investigation of Communist Party activities in this state is within the power of our Legislature and the authority granted to its investigating committee, the Attorney General. Because of the nature of the Communist Party it is a proper and permissible subject of constant scrutiny by the Legislature. *Gibson v. Florida Legislative Investigating Com.*, 372 U.S. 539, 547. A defendant's own past or present membership in the Party is within the purview of such an investigation. *Id.* The nexus between the defendant and subversive activities disclosed by the report offered in evidence by the Attorney General and properly admitted by the Court, furnished adequate justification for his present interrogation of the defendant. The decisions in No. 44 [fol. 56] *American Committee for Protection of Foreign Born v. Subversive Activities Control Board*, — U.S. —, 33 L.W. 4336, and No. 65 *Veterans of Abraham Lincoln Brigade v. Subversive Activities Control Board*, — U.S. —, 33 L.W. 4339 (decided April 26, 1965) are not apposite to the situation existing in this case. This exer-

cise by the State of its power adequately to inform itself in order to act and protect its legitimate and vital interests has not been "pressed, in this instance, to a point where it has come into fatal collision with the overriding constitutionally protected rights" of the defendant. *Uphaus v. Wyman*, 360 U.S. 72, 81.

Exceptions overruled.

DUNCAN, J., concurred in the result; the others concurred.

DUNCAN, J., *concurring*: The 1957 statute, under which this proceeding was instituted in 1963, directs the Attorney General to make an investigation of "violations" of the "Subversive Activities Act of 1951," or of "information . . . relating to" such violations. RSA 588:8-a (supp). Section 8-a and my views concerning it have not changed since it was under consideration four years ago in a prior proceeding against this defendant. See *Wyman v. DeGregory*, 103 N.H. 214, 218-219. The foundation for the most recent order that the defendant answer questions propounded by the Attorney General is once again the report made by Attorney General Wyman to the Legislature in 1955. However, I am bound to accept as decided law the interpretation placed upon s. 8-a, *supra*, by a majority of this court in *Wyman v. DeGregory, supra*, since affirmed by *DeGregory v. Attorney General of New Hampshire*, 368 U.S. 19, and therefore concur in the order entered today.

[fol. 57]

IN THE SUPREME COURT OF THE STATE OF NEW HAMPSHIRE
No. 5298

ATTORNEY GENERAL OF NEW HAMPSHIRE,

VS.

HUGO DeGREGORY.

NOTICE OF APPEAL TO THE SUPREME COURT OF THE
UNITED STATES—Filed May 28, 1965

I. Notice is hereby given that Hugo DeGregory the above-named defendant hereby appeals to the Supreme Court of the United States from the final judgment of this Court which overruled his exceptions to the decree of the Superior Court of Merrimack County of the State of New Hampshire, adjudging him in contempt of the Superior Court in and for said County of Merrimack and ordered him committed to County Jail, there to remain for one year or until he earlier was purged of said contempt. Pending appeal, bail was set at \$1,000 and he was released on his own recognizance.

Final judgment in this proceeding was entered April 30, 1965 by order of said Supreme Court of New Hampshire.

This appeal is taken pursuant to 28 USC, §1257(2).

II. The Clerk will please prepare a transcript of the record in this case for transmission to the Clerk of the Supreme Court of the United States and include in said transcript the following:

1. The reserved case No. 5298 argued January 5, 1965, the defendant's brief, the Attorney General's brief, and the New Hampshire Supreme Court's decision thereon dated April 30, 1965 and the concurring opinion of Duncan J.

[fol. 58] 2. Transcript of hearing before the Attorney General at Concord, New Hampshire on November 22, 1963.

3. Transcript of hearing at Concord, New Hampshire on May 20, 1964 in the Superior Court for Merrimack County.

4. All exhibits introduced in the Superior Court hearing, particularly State's Exhibit I (Report of Attorney General to New Hampshire General Court on January 5, 1955).

5. Notice of appeal.

III. The following questions are presented by this appeal.

1. Whether RSA, Chapter 588, §8A, (Chapter 178, Laws of 1957) violates due process of law under the Fourteenth Amendment to the United States Constitution by permitting a purported legislative committee free of legislative control, and unlimited in time, to be used as a device to bestow wide judicial and legislative powers upon the Attorney General of the State of New Hampshire.


2. Whether RSA, Chapter 588, §8A as applied by this Court on the record of this case, violates due process of law under the Fourteenth Amendment to the United States Constitution by authorizing a legislative committee to summon and question the defendant herein without any legal showing of foundation, basis in fact or probable cause for conducting an investigation and for investigating the defendant.

3. Whether the decision of this Court in this case denied to defendant his right of privacy and abridged his freedom of speech and assembly under the First Amendment to the United States Constitution as guaranteed to him by the Fourteenth Amendment to said Constitution by holding that [fol. 59] RSA, Chapter 588, §8A, authorized the Attorney General to summon and question the defendant herein without any legal showing of foundation, basis in fact or prob-

able cause for conducting an investigation or for investigating the defendant.

Howard S. Whiteside, 30 State Street, Boston 9,
Mass.

Proof of Service (omitted in printing).

[fol. 60] Clerk's Certificate to foregoing transcript
(omitted in printing).  _____

[fol. 61]

SUPREME COURT OF THE UNITED STATES

No. 396, October Term, 1965

HUGO DeGREGORY, Appellant,

v.

ATTORNEY GENERAL OF THE STATE OF NEW HAMPSHIRE.

Appeal from the Supreme Court of the State of New
Hampshire.

ORDER NOTING PROBABLE JURISDICTION—October 18, 1965

The statement of jurisdiction in this case having been
submitted and considered by the Court, probable jurisdic-
tion is noted and the case is placed on the summary calen-
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Supreme Court of the United States.

OCTOBER TERM, 1965.

No.

HUGO DEGREGORY, *Appellant*,

v.

ATTORNEY GENERAL OF THE STATE OF
NEW HAMPSHIRE, *Appellee*.

JURISDICTIONAL STATEMENT.

Opinion Below.

This is an appeal from a decision of the Supreme Court of New Hampshire rendered on April 30, 1965. It is not yet reported in the New Hampshire Reports but will be found in volume 106, New Hampshire Reports, and 209 A. 2d 712. The New Hampshire Supreme Court affirmed a Superior Court decision which ordered the appellant committed to jail for one year for civil contempt.

Jurisdiction.

This appeal is taken pursuant to 28 U.S. Code, § 1257 (2), which provides:

“Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court as follows:

.

“(2) By appeal, where is drawn in question the validity of a statute of any state on the ground of its being repugnant to the Constitution, treaties or laws of the United States, and the decision is in favor of its validity.”

Bantam Books, Inc. v. Sullivan, 372 U.S. 58.

Notice of appeal was filed in the New Hampshire Supreme Court on May 28, 1965.

From the inception of this proceeding, appellant has raised the constitutional issues argued herein, except for the issue of unconstitutionality on its face of New Hampshire Revised Statutes Annotated, c. 588, § 8-a. Comment on that issue will be made hereinafter.

The constitutional issues here presented were raised in appellant's answer to the petition filed in the Superior Court for Merrimack County, New Hampshire (R. 12), except that, as above noted, the constitutionality on its face of the statute was not argued.

The issues were argued in a memorandum of law filed in the Superior Court.

Exception was taken to the judge's ruling that the Attorney General could properly question DeGregory (R. 139) and to the introduction of Exhibit 1 in this record (R. 155).

The issues were argued before the Supreme Court of New Hampshire (R. 31 *et seq.*) and the New Hampshire Court ruled adversely to appellant (R. 79).

Said the Court: “This exercise by the state of its power adequately to inform itself in order to act and protect its legitimate and vital interests has not been ‘pressed, in this instance, to a point where it has come into fatal collision with the overriding constitutionally protected rights’ of defendant. *Uphaus v. Wyman*, 360 U. S. 72, 81.”

Questions Presented.

The questions presented in this appeal are as follows:

1. Whether Revised Statutes Annotated, c. 588, § 8-a, as applied by the Court on the record of this case, violates due process of law under the Fourteenth Amendment to the United States Constitution by authorizing a legislative committee to summon and question the defendant herein without any legal showing of foundation, basis in fact or probable cause for conducting an investigation and for investigating the defendant.

2. Whether the decision of the Court in this case denied to defendant his right of privacy and abridged his freedom of speech and assembly under the First Amendment to the United States Constitution as guaranteed to him by the Fourteenth Amendment to said Constitution by holding that Revised Statutes Annotated, c. 588, § 8-a, authorized the Attorney General to summon and question the defendant herein without any legal showing of foundation, basis in fact or probable cause for conducting an investigation or for investigating the defendant.

3. Whether Revised Statutes Annotated, c. 588, § 8-a (chapter 178, Laws of 1957), violates due process of law under the Fourteenth Amendment to the United States Constitution by permitting a purported legislative committee, free of legislative control, and unlimited in time, to be used as a device to bestow wide judicial and legislative powers upon the Attorney General of the State of New Hampshire.

Statement of the Case.

This proceeding is brought under New Hampshire Revised Statutes Annotated, c. 588, which is the State Subversive Activities Law. Under section 8-a of that chap-

ter the Attorney General is granted authority by the Legislature to conduct an investigation in the field of subversive activities "At any time when the attorney general has information which he deems reasonable or reliable relating to violations of the provisions of this chapter."

"ATTORNEY GENERAL. At any time when the attorney general has information which he deems reasonable or reliable relating to violations of the provisions of this chapter he shall make full and complete investigation thereof and shall report to the general court the results of this investigation, together with his recommendations, if any, for legislation. In any investigation hereunder the attorney general or any duly authorized member of his staff is authorized to require by subpoena or otherwise the attendance of such witnesses and the production of such correspondence, books, papers and documents and to administer such oaths, and to take such testimony and to make such expenditures within the funds provided as he deems advisable. The provisions of section 7 of this chapter shall be inapplicable to the investigation provided for herein and the attorney general is hereby authorized to make public such information received by him, testimony given before him, and matters handled by him as he deems fit to effectuate the purposes hereof."

The previous proceeding which was decided in this Court in *DeGregory v. Attorney General of New Hampshire*, 368 U.S. 19, was terminated when DeGregory appeared in the Superior Court of New Hampshire, answered in the negative the question: "Are you presently a member of the Communist Party?" and thereupon was purged of contempt (R. 107). Within a few days the Attorney General started the present proceeding by causing a subpoena to

be served on DeGregory. A hearing was held before the Attorney General on November 22, 1963. At that time the Attorney General posed a number of questions to DeGregory and early in the proceeding the witness made the following statement:

"I would like to state, Mr. Gall, that I am not now a member of the Communist Party and have not been at any time since the authority you have cited, RSA 588:8-a: that I have no knowledge of any Communist activities in New Hampshire during this period or of any violations of RSA 588 during this period of six and one-half years. In fact, I am not even aware of the existence of a Communist Party in the state of New Hampshire at any time the authority you have cited, Section 8-a, has been on the statute books, and in view of the foregoing I do not understand what I have to face here today." (R. 91.)

Thereafter the Attorney General continued to pose questions and DeGregory raised objections and declined to answer them (R. 91-97). The Attorney General thereupon brought a petition in the Superior Court, pursuant to New Hampshire Revised Statutes Annotated, c. 491, and DeGregory filed an answer thereto, raising the constitutional objections now relied upon (R. 12). A hearing was held in the Superior Court on May 20, 1964. At that hearing DeGregory again repeated the sworn statement which he had previously made in the hearing before the Attorney General and declined to answer a series of questions which are set forth in the record of the Superior Court (R. 143, *et seq.*). The Court entered an order finding DeGregory in contempt and ordering him committed to a jail for one year or until he might purge himself, and meanwhile released him on his own recognizance (R. 169). As stated

previously, the Supreme Court of New Hampshire affirmed the decision of the lower Court and ruled that the statute on the record of the case did not contravene the New Hampshire or United States Constitutions (R. 75-82).

The Questions are Substantial.

The first and second questions involve passing on the constitutionality of the statute as applied by the New Hampshire Court on the record in this case. Due process of law, the First Amendment rights of freedom of speech and freedom to be silent, and the Fourth Amendment right to be free from unreasonable search are involved.

Two kinds of foundation or probable cause must be considered and will be touched on successively.

The first is the kind of foundation the Attorney General must have to institute an investigation.

As stated in *N.A.A.C.P. v. Button*, 371 U.S. 415, 438: "The decisions of this Court have consistently held that only a compelling state interest in the regulation of a subject within the State's constitutional power to regulate can justify limiting First Amendment freedoms."

The Attorney General was heard to argue that he really does not need any foundation at all, except some kind of unspecified probable cause (R. pp. 131, 133), and he further pointed out that the Legislature had indicated a continuing interest in the subject of subversive activities and cited New Hampshire Laws of 1961 and 1963, each of which merely provided for annual appropriations of \$2,000 (R. p. 67). It was stated in the Courts below, and not denied, that the Attorney General has made no written report to the Legislature since the report of 1955 on which he and the New Hampshire Court relied in this case as the justification of investigation (R. p. 25).

This Court needs no reminder that, in balancing First Amendment rights of an individual against the urgent necessity of the self-preservation of the state, it must be ascertained that there is such urgency as to warrant limiting the individual's rights.

Sweezy v. New Hampshire, 354 U.S. 234.

Watkins v. United States, 354 U.S. 178.

Gibson v. Florida Legislative Investigation Committee, 372 U.S. 539.

Shelton v. United States, 327 F. 2d 601 (C.A. D.C.).

Jordan v. Hutcheson, 323 F. 2d 597 (C.A. 4).

Having in mind the law as laid down in these cases, it is submitted that no requisite legislative purpose is found in the record of this case. When DeGregory made the sworn statement already quoted, he said: "I don't understand what I have to face here today." At that point the burden was on the Attorney General to state the legislative purposes of the investigation and the grounds which permitted him at that time to pursue it.

"... it must be up to the State to make some at least plausible disclosure of its lawmaking interest so that the relevance of its inquiries to it may be tested." Brennan, J., dissenting, in *Uphaus v. Wyman*, 360 U.S. 72, 105.

We are dealing here with a state investigating committee whose powers are circumscribed. *Pennsylvania v. Nelson*, 350 U.S. 497. The passing of the 1957 Act (Revised Statutes Annotated, c. 588, § 8-a) presumably implied findings of urgency by the Legislature, but such findings cannot continue forever without some further showing that the need which brought about the original statute still continues.

We would like to emphasize the difference of this proceeding and the previous proceeding between the same

parties, *DeGregory v. Attorney General of New Hampshire*, 368 U.S. 19. In the previous case only one question was involved: "Are you presently a member of the Communist Party?" There was no doubt by the very tense of the question, "Are you presently . . .," that at least the Attorney General was attempting to inquire about events and facts then current.

Compare this proceeding, where DeGregory, by his sworn statement, covered the present and the past back to the date of the passage of the statute in 1957. The continued insistence on questioning him, and the refusal to place any dates on what period the questions related to, make it plain that now the Attorney General is not seeking current information, but inquiring into events of long ago (R. 91-98).

The New Hampshire Court made it crystal clear that it relied solely on the 1955 report of the Attorney General (R. Ex. 1) as the basis for the current investigation (R. 77). At the time of its introduction in evidence (May, 1964) this report was over nine years old and most of its contents related to events even older. How long can an investigator justify going over and over evidence so old? Where is that threat to the state which alone can constitutionally justify the obvious impingement on First Amendment rights?

The New Hampshire Court stated that the nature of the Communist Party is such that it can be the subject of constant scrutiny; but first it must be shown to exist in New Hampshire, and the only evidence in the record is negative, namely DeGregory's sworn statement (R. 91).

The Attorney General's presentation has the same quality of staleness, the same lack of connection with the present day noted by this Court in *Veterans of Abraham Lincoln Brigade v. Subversive Activities Control Board*, 380 U.S. 503, and *American Committee for Protection of Foreign Born v. Subversive Activities Control Board*, 380 U.S. 513.

The New Hampshire Supreme Court cited *Nelson v. Wyman*, 99 N.H. 33, as justifying a scrutiny of the distant past (R. 79). Counsel for DeGregory discussed that case before the Superior Court (R. 119, 120), and pointed out that in that case an inquiry into events of the past was upheld only because it was ancillary to the investigation of current information.

As stated in the opinion of the Court of Appeals in *Veterans of Abraham Lincoln Brigade v. Subversive Activities Control Board*, 331 F. 2d 64, 67: "This statute is cast in the present tense. It is not designed to produce historical treatises."

It is submitted, therefore, that the state has not successfully carried its burden of showing any legislative purpose in this investigation, and that therefore the questioning of DeGregory was in violation of his First Amendment rights as guaranteed by the Fourteenth Amendment of the United States Constitution.

Turning to the other branch of foundation, probable cause or nexus, assume that this Court holds that the Attorney General on the record of this case had the right to make an investigation of subversive activities; he then had the burden of showing some basis, some probable cause for summoning appellant DeGregory to testify.

Whether appellant's right rests on a "right of privacy" under the First Amendment or other constitutional clauses, or on his right not to be subjected to unreasonable search under the Fourth Amendment, this Court has repeatedly made clear that the government, federal or state, cannot engage in "indiscriminate dragnet procedures," a phrase used in *Barenblatt v. United States*, 360 U.S. 109, 134, and in *Wilkinson v. United States*, 365 U.S. 399, 412.

Put in another way, the Court in *Gibson v. Florida Legislative Investigation Committee*, 372 U.S. 539, at 557 stated: "... an adequate foundation for inquiry must be laid

before proceeding in such a manner as will substantially intrude upon and severely curtail or inhibit constitutionally protected activities or seriously interfere with similarly protected associational rights."

The probable cause relied on by appellee was once again the 1955 Report of the Attorney General (Ex. 1). There was also reference made to "documented sworn testimony to the effect that Hugo DeGregory had been for a long time active within the Communist Party within this state" (R. 87).

However, on repeated challenge, appellee never put a date on this alleged testimony, and never produced it (R. 87, 115, 117, 123, 133, 135, 137).

The New Hampshire Supreme Court, in its opinion, relied solely on the 1955 Report (R. 77, 79), and cited pages 204-206 of the Report. The most recent references to DeGregory in those pages were dated in 1953 and 1954, and in fact did not themselves relate to violations of Revised Statutes Annotated, c. 588.

Couple these stale and tenuous citations with the uncontradicted statement under oath by appellant (R. 143) and it becomes perfectly clear that appellee had nothing even faintly approaching probable cause or reason to believe that DeGregory had any information that the Attorney General could legitimately seek.

We have already cited authorities to show that, lacking such a nexus or foundation, the summoning and questioning of appellant was in violation of his rights as guaranteed by the Fourteenth Amendment.

In the notice of appeal the issue of unconstitutionality on its face of New Hampshire Revised Statutes Annotated, c. 588, § 8-a, was raised. This question was not argued below because the New Hampshire Court was bound by the previous case of *DeGregory v. Attorney General of New Hampshire*, 368 U.S. 19.

It is open to this Court, if it so desires, to reconsider the law. The question is submitted without argument by appellant.

Conclusion.

It is submitted, therefore, that, as a matter of due process of law and of First and Fourth Amendment rights as applied by the Fourteenth Amendment to the United States Constitution, the decision of the New Hampshire Court was plainly wrong. On the record of this case we urge that appellant cannot constitutionally be ordered to jail for refusal to answer the Attorney General's questions, and that the decision of the Court below should be reversed.

Respectfully submitted,

HOWARD S. WHITESIDE,

Attorney for HUGO DeGREGORY, Appellant.

[Appendices follow.]

Appendix A.

NEW HAMPSHIRE REVISED STATUTES ANNOTATED.

CHAPTER 491.

Section 19. PETITION. Whenever any official or board is given the power to summon witnesses and take testimony, but has not the power to punish for contempt, and any witness refuses to obey such summons either as to his appearance or as to the production of things specified in the summons, or refuses to testify or to answer any questions, a petition for an order to compel him to testify or his compliance with the summons may be filed in the Superior Court or with some justice thereof.

Section 20. PROCEDURE. Upon such petition the Court or justice shall have authority to proceed in the matter as though the original proceeding had been in the court and may make orders and impose penalties accordingly.

CHAPTER 588.

SUBVERSIVE ACTIVITIES.

588:1 DEFINITIONS. For the purpose of this chapter "organization" means an organization, corporation, company, partnership, association, trust, foundation, fund, club, society, committee, political party, or any group of persons, whether or not incorporated, permanently or temporarily associated together for joint action or advancement of views on any subject or subjects.

"Subversive organization" means any organization which engages in or advocates, abets, advises, or teaches, or a purpose of which is to engage in or advocate, abet, advise, or teach activities intended to overthrow, destroy or alter, or to assist in the overthrow, destruction or alteration of,

the constitutional form of government of the United States, or of the state of New Hampshire, or of any political subdivision of either of them, by force, or violence.

"Foreign subversive organization" means any organization directed, dominated or controlled directly or indirectly by a foreign government which engages in or advocates, abets, advises, or teaches, or a purpose of which is to engage in or to advocate, abet, advise, or teach, activities intended to overthrow, destroy, or alter, or to assist in the overthrow, destruction or alteration of the constitutional form of government of, the United States, or of the state of New Hampshire, or of any political subdivision of either of them, and to establish in place thereof any form of government the direction and control of which is to be vested in, or exercised by or under, the domination or control of any foreign government, organization, or individual; but does not and shall not be construed to mean an organization the *bona fide* purpose of which is to promote world peace by alliances or unions with other governments or world federations, unions or governments to be effected through constitutional means.

"Foreign government" means the government of any country or nation other than the government of the United States of America or one of the states thereof.

"Subversive person" means any person who commits, attempts to commit, or aids in the commission, or advocates, abets, advises or teaches, by any means any person to commit, attempt to commit or aid in the commission of any act intended to overthrow, destroy or alter, or to assist in the overthrow, destruction or alteration of, the constitutional form of the government of the United States, or of the state of New Hampshire, or any political subdivision of either of them, by force, or violence, or who is a member of a subversive organization or a foreign subversive organization.

SEDITION.

588:2 FELONIES. It shall be a felony for any person knowingly and wilfully to

(a) commit, attempt to commit, or aid in the commission of any act intended to overthrow, destroy, or alter, or to assist in the overthrow, destruction or alteration of the constitutional form of the government of the United States, or of the state of New Hampshire, or any political subdivision of either of them, by force or violence; or

(b) advocate, abet, advise or teach by any means any person to commit, attempt to commit, or assist in the commission of any such act under such circumstances as to constitute a clear and present danger to the security of the United States, or of the state of New Hampshire or of any political subdivision of either of them; or

(c) conspire with one or more persons to commit any such act; or

(d) assist in the formation or participate in the management or to contribute to the support of any subversive organization or foreign subversive organization knowing said organization to be a subversive organization or a foreign subversive organization; or

(e) destroy any books, records or files, or secrete any funds in this state of a subversive organization or a foreign subversive organization, knowing said organization to be such.

Any person who shall be convicted by a court of competent jurisdiction of violating any of the provisions of this section shall be fined not more than twenty thousand dollars, or imprisoned for not more than twenty years, or both, at the discretion of the court.

588:3 PENALTY. It shall be a felony for any person after August 1, 1951 to become, or after November 1, 1951 to remain a member of a subversive organization or a foreign

subversive organization knowing said organization to be a subversive organization or foreign subversive organization. Any person who shall be convicted by a court of competent jurisdiction of violating this section shall be fined not more than five thousand dollars, or imprisoned for not more than five years, or both, at the discretion of the court.

588:3-a EVIDENCE OF MEMBERSHIP OR PARTICIPATION. In determining membership or participation in a subversive organization or a foreign subversive organization as defined in this chapter, or knowledge of the purpose or objective of such organization, the jury, under instructions from the court, may consider evidence, if presented, as to whether the accused person to his knowledge:

- (1) Has been listed as a member in any book or any of the lists, records, correspondence, or any other document of the organization;
- (2) Has made financial contribution to the organization in dues, assessments, loans, or in any other form;
- (3) Has made himself subject to the discipline of the organization in any form whatsoever;
- (4) Has executed orders, plans, or directives of any kind of the organization;
- (5) Has acted as an agent, courier, messenger, correspondent, organizer, or in any other capacity in behalf of the organization;
- (6) Has conferred with officers or other members of the organization in behalf of any plan or enterprise of the organization;
- (7) Has been accepted as an officer or member of the organization or as one to be called upon for services by other officers or members of the organization;
- (8) Has written, spoken or in any other way communicated by signal, semaphore, sign or in any other form

- of communication orders, directives, or plan of the organization;
- (9) Has prepared documents, pamphlets, leaflets, books or any other type of publication in behalf of the objectives and purposes of the organization;
 - (10) Has mailed, shipped, circulated, distributed, delivered, or in any other way sent or delivered to others materials or propaganda of any kind in behalf of the organization;
 - (11) Has advised, counseled or in any other way imparted information, suggestions, recommendations to officers or members of the organization or to anyone else in behalf of the objectives of the organization;
 - (12) Has indicated by word, action, conduct, writing or in any other way a willingness to carry out in any manner and to any degree the plans, designs, objectives, or purposes of the organization;
 - (13) Has in any other way participated in the activities, planning, actions, objectives, or purposes of the organization;
 - (14) The enumeration of the above subjects of evidence on membership or participation in a subversive organization or a foreign subversive organization as above defined, shall not limit the inquiry into and consideration of any other subject of evidence on membership and participation as herein stated.

588:3-b CONSTRUCTION OF PROVISION. Nothing in the preceding section shall be construed to limit the supervisory power of the court over the admission and exclusion of evidence or over the sufficiency of the evidence as a whole.

588:4 BARRED FROM OFFICE. Any person who shall be convicted by a court of competent jurisdiction of violating any of the provisions of sections 2 and 3 of this chapter,

in addition to all other penalties therein provided, shall from the date of such conviction be barred from:

(a) holding any office, elective or appointive, or any other position of profit or trust in or employment by the government of the state of New Hampshire or of any agency thereof or of any county, municipal corporation or other political subdivision of said state;

(b) filing or standing for election to any public office in the state of New Hampshire.

588:5 DISSOLUTION OF ORGANIZATIONS. It shall be unlawful for any subversive organization or foreign subversive organization to exist or function in the state of New Hampshire and any organization which by a court of competent jurisdiction is found to have violated the provisions of this section shall be dissolved, and if it be a corporation organized and existing under the laws of the state of New Hampshire, a finding by a court of competent jurisdiction that it has violated the provisions of this section shall constitute legal cause for forfeiture of its charter and its charter shall be forfeited, and all funds, books, records and files of every kind and all other property of any organization found to have violated the provisions of this section shall be seized by and for the state of New Hampshire, the funds to be deposited in the state treasury and the books, records, files and other property to be turned over to the attorney general of New Hampshire.

588:6 ASSISTANCE FURNISHED. For the collection of any evidence and information referred to in this chapter, the attorney general is hereby directed to call upon the superintendent of the state police, and county and municipal police authorities of the state to furnish him such assistance as may from time to time be required. Such police authorities are directed to furnish information and assistance as may be from time to time so requested. The attorney general may testify before any grand jury as to matters re-

ferred to in this chapter as to which he may have information.

588:7 RECORDS. The attorney general shall maintain complete records of all information received by him and all matters handled by him under the requirements of this chapter. Such records as may reflect on the loyalty of any resident of this state shall not be made public nor divulged to any person except with the permission of the attorney general to effectuate the purposes thereof.

588:8 GRAND JURY INQUIRIES. The superior court, when in its discretion it appears appropriate, or when informed by the attorney general that there is information or evidence of the character described in section 2 of this chapter to be considered by the grand jury, shall charge the grand jury to inquire into violations of this chapter for the purpose of proper action.

588:8-a ATTORNEY GENERAL. At any time when the attorney general has information which he deems reasonable or reliable relating to violations of the provisions of this chapter he shall make full and complete investigation thereof and shall report to the general court the results of this investigation, together with his recommendations, if any, for legislation. In any investigation hereunder the attorney general or any duly authorized member of his staff is authorized to require by subpoena or otherwise the attendance of such witnesses and the production of such correspondence, books, papers and documents and to administer such oaths, and to take such testimony and to make such expenditures within the funds provided as he deems advisable. The provisions of section 7 of this chapter shall be inapplicable to the investigation provided for herein and the attorney general is hereby authorized to make public such information received by him, testimony given before him, and matters handled by him as he deems fit to effectuate the purposes hereof.

LOYALTY.

588:9 EMPLOYMENT. No subversive person, as defined in this chapter, shall be eligible for employment in, or appointment to any office, or any position of trust or profit in the government of, or in the administration of the business of this state, or of any county, municipality, or other political subdivision, of this state.

588:10 WRITTEN STATEMENTS REQUIRED. Every person and every board, commission, council, department, court or other agency of the state of New Hampshire, or any political subdivision thereof, who or which appoints or employs or supervises in any manner the appointment or employment of public officials or employees shall establish by rules, regulations or otherwise, procedures designed to ascertain before any person, including teachers, and other employees of any public educational institution in this state, is appointed or employed, that he or she as the case may be, is not a subversive person, and that there are no reasonable grounds to believe such persons are subversive persons. In the event such reasonable grounds exist, he or she as the case may be, shall not be appointed or employed. In securing any facts necessary to ascertain the information herein required, the applicant shall be required to sign a written statement containing answers to such inquiries as may be material, which statement shall contain notice that it is subject to the penalties of perjury.

588:11 EXCEPTIONS. The inquiries prescribed in section 10 other than the written statement to be executed by an applicant for employment, shall not be required as a prerequisite to the employment of any persons in the classification of laborers in any case in which the employing authority shall in his or its discretion determine and by rule or regulation specify the reasons why, the nature of the work to be performed is such that employment of persons as to whom there may be reasonable grounds to believe that they

are subversive persons as defined in this chapter will not be dangerous to the health of the citizens or the security of the government of the United States, the state of New Hampshire or any political subdivision thereof.

588:12 **PRESENT EMPLOYEES.** Every person, who on August 1, 1951 shall be in the employ of the state of New Hampshire or of any political subdivision thereof, other than those now holding elective office shall be required on or before October 1, 1951 to make a written statement which shall contain notice that it is subject to the penalties of perjury, that he or she is not a subversive person as defined in this chapter, namely, any person who commits, attempts to commit, or aids in the commission, or advocates, abets, advises or teaches by any means any person to commit, attempt to commit, or aid in the commission of any act intended to overthrow, destroy or alter, or to assist in the overthrow, destruction or alteration of, the constitutional form of the government of the United States, or of the state of New Hampshire, or any political subdivision of either of them, by force, or violence; or who is a member of a subversive organization or a foreign subversive organization, as more fully defined in this chapter. Such statement shall be prepared and execution required by every person and every board, commission, council, department, court, or other agency of the State of New Hampshire or any political subdivision thereof responsible for the supervision of employees under its jurisdiction. Any such person failing or refusing to execute such a statement or who admits he is a subversive person as defined in this chapter shall immediately be discharged.

588:13 **DISCHARGE OF PERSONNEL; HEARING.** Reasonable grounds on all the evidence to believe that any person is a subversive person, as defined in this chapter shall be cause for discharge from any appointive office or other position of profit or trust in the government of or in the

administration of the business of this state, or of any county, municipality or other political subdivision of this state, or any agency thereof. The personnel commission shall, by appropriate rules or regulations, prescribe that persons charged with being subversive persons, as defined in this chapter, shall be accorded notice and opportunity to be heard, in accordance with the procedures prescribed by law for discharges for other reasons. Every person and every board, commission, council, department, or other agency of the state of New Hampshire or any political subdivision thereof having responsibility for the appointment, employment or supervision of public employees not covered by the state classified service shall establish rules or procedures similar to those required herein for classified services for a hearing for any person charged with being a subversive person, as defined in this chapter after notice and opportunity to be heard. Every employing authority discharging any person pursuant to any provision of this chapter shall promptly report to the attorney general the fact of and the circumstances surrounding such discharge. A person discharged under the provisions of this section shall have the right within thirty days thereafter to appeal to the superior court of the county where such person may reside for a determination by such court (with the aid of a jury if the appellant so elects) as to whether or not the discharge appealed from was justified under the provisions of this act. The court shall speedily hear and determine such appeals, and from the judgment of the court, there shall be a further appeal to the supreme court of New Hampshire as in civil cases.

588:14 DECLARATIONS OF CANDIDATES. No person shall become a candidate for election to, nor qualify for, any public office under the election laws of this state unless he or she shall file with the declaration of candidacy, or prior to qualifying, an affidavit that he or she is not a subversive

person as defined in this chapter. No declaration of candidacy shall be received for filing by any town or city clerk or by the secretary of state unless accompanied by the affidavit aforesaid and there shall not be entered upon any ballot or voting machine at any election the name of the person who has failed or refused to make the affidavit aforesaid.

588:15 FALSE STATEMENTS. Every written statement made pursuant to this chapter by an applicant for appointment or employment, or by any employee shall be deemed to have been made under oath if it contains a declaration preceding the signature of the maker to the effect that it is made under the penalties of perjury. Any person who makes a material misstatement of fact (a) in any such written statement, or (b) in any affidavit made pursuant to the provisions of this chapter, or (c) under oath in any hearing conducted by any agency of the state, or of any of its political subdivisions, pursuant to this chapter, or (d) in any written statement by an applicant for appointment or employment or by an employee in any state aid institution of learning in this state, intended to determine whether or not such applicant or employee is a subversive person as defined in this chapter, which statement contains notice that it is subject to the penalties of perjury shall be subject to the penalties of perjury prescribed in chapter 587, RSA.

588:16 TITLE. This chapter may be cited as the "Subversive Activities Act of 1951."

Appendix B.

OPINION OF SUPREME COURT OF NEW HAMPSHIRE.

Merrimack,
No. 5298.

WILLIAM MAYNARD, ATTORNEY GENERAL

v.

HUGO DE GREGORY

Argued January 5, 1965.

Decided April 30, 1965.

Petition under RSA 491:19, 20 to compel the defendant to answer certain questions asked him in a legislative investigation of subversive activities by the Attorney General pursuant to the provisions of RSA 588:8-a (supp).

When directed by the Trial Court (*Loughlin, J.*) to answer the propounded questions, defendant refused. He informed the Court he was not invoking his privilege against self incrimination. The Court adjudged him in contempt and ordered him committed to jail for a period of one year or until he purged himself of contempt. However, he was released on his own recognizance pending this appeal.

William Maynard, Attorney General, *R. Peter Shapiro*, Assistant Attorney General, and *Joseph F. Gall*, Special Assistant to the Attorney General (*Messrs. Shapiro and Gall* orally) for the Attorney General.

Lawrence J. Walsh and *Howard S. Whiteside* (of Massachusetts) (*Mr. Whiteside* orally), for the defendant.

LAMPRON, J. The first issue raised by the defendant is whether under the circumstances of this case the Attorney General has power under RSA 588:8-a (supp) to question him and whether the Superior Court has power to commit him for his refusal to answer the questions asked.

RSA 588:8-c (supp) reads in part as follows: "At any time when the Attorney General has information which he deems reasonable or reliable relating to violations of the provisions of this chapter he shall make full and complete investigation thereof and shall report to the General Court the results of this investigation, together with his recommendations, if any, for legislation."

We held in *Wyman v. De Gregory*, 103 N.H. 214, 216, 217, that this "statute does not require that there must be a violation of law before the legislative investigation can be set in motion. It only requires that there be reasonable and reliable information 'relating' to violations of the provisions of RSA Ch. 588" relating to subversive activities. This judgment was affirmed by the United States Supreme Court. *De Gregory v. Attorney General of New Hampshire*, 368 U.S. 19. That Court, as recently as March, 1963, reaffirmed the broad inherent power of a Legislature to conduct investigations "concerning the administration of existing laws as well as proposed or possibly needed statutes." *Gibson v. Florida Legislative Investigation Com.*, 372 U.S. 539, 545. See Annot. 3 L. Ed. 2d 1647, 1650.

The defendant argues, however, that the Attorney General did not comply with RSA 588:8-a (supp) in that he failed to show (1) that he "has information which he deems reasonable or reliable relating to violations of the provisions of" RSA ch. 588, and (2) that he has reasonable cause to believe that the defendant has evidence pertinent to the subject under investigation.

It has long been recognized that the tenets of the Communist Party include the overthrow of government by force and violence. *Nelson v. Wyman*, 99 N.H. 33, 50; *Barenblatt v. United States*, 360 U.S. 109, 128. That the State of New Hampshire has an interest in the preservation of its government against the menace of Communist subversion is firmly established. *Nelson v. Wyman*, *supra*;

Gibson v. Florida Legislative Investigation Com., 372 U.S. 539, 547. Furthermore our Legislature has manifested a continuing concern to be kept informed by its investigating committee, the Attorney General, as to the need of "further legislation in the field of subversive activities." *Wyman v. De Gregory*, 103 N.H. 214, 217; RSA 588:8-a (supp); Laws 1961, 224:1 (p. 311) and 225:1 (p. 402); Laws 1963, 198:1 (p. 201) and 199:1 (p. 298).

In the present proceeding instituted in 1963 the Attorney General introduced in evidence a report to the Legislature, made by a prior Attorney General, showing the existence of a Communist Party and Communist influence in New Hampshire and the probable continuance of such activities in our state. Report of the Attorney General to New Hampshire General Court (January 5, 1955). In prior proceedings beginning in February 1960, the Attorney General attempted to obtain information from the defendant, which he is still seeking in the present proceedings. We hold that given the nature of the Communist movement and its mode of operation the above report could constitute information which the Attorney General could deem reasonable or reliable relating to violations of RSA ch. 588 and the proper basis for his present investigation of subversive activities on behalf of the Legislature. *Wyman v. De Gregory*, 103 N.H. 214, 217; *De Gregory v. Attorney General of New Hampshire*, 368 U.S. 19; *Gibson v. Florida Legislative Investigation Com.*, 372 U.S. 539, 547.

It was also stated in the above report that the then Attorney General had reliable information concerning defendant's participation in the Communist Party as an officer, a presiding officer at conferences in New Hampshire, and in numerous other party activities. (pp. 204-206). When questioned by the Attorney General on November 22, 1963, and also in the Superior Court in the hearing which is the basis of this appeal, the defendant made the following state-

ment: "I am not now a member of the Communist Party and have not been at any time since the authority you have cited, RSA 588:8-a; that I have no knowledge of any Communist activities in New Hampshire during this period or of any violations of RSA 588 during this period of six and one-half years." Even if taken at its face value, this statement does not render otherwise proper and pertinent information regarding his prior contacts and involvements with the Communist Party and its members in this State beyond the legitimate interest and jurisdiction of the Attorney General acting as the investigating committee of the Legislature. *Nelson v. Wyman*, 99 N.H. 33, 39; *Uphaus v. Wyman*, 360 U.S. 72, 78.

We hold, as we did in *Wyman v. De Gregory*, 103 N.H. 214, 217, that the Attorney General had reasonable and reliable information relating to violations of RSA ch. 588 which provided a valid and relevant basis for the investigation of the defendant. We hold further that the Superior Court could properly hold the defendant in contempt under RSA 491:19, 20 for his refusal to answer whether he was ever a member, a paid member, or an officer of the Communist Party; if he ever had access to or control of membership or financial records of the Party in New Hampshire or attended Party meetings; the extent of control of the Party activities in this state exerted by a Party unit in Boston of which he is alleged to have been an officer; if he attended Party meetings in New Hampshire where advocacy of the overthrow of the Government took place or persons conspired to so do; also questions as to his knowledge about the books, records or files of the Party in this state and about his contributions to its support. *Uphaus v. Wyman*, 360 U.S. 72; *Barenblatt v. United States*, 360 U.S. 109; *Wilkinson v. United States*, 365 U.S. 399; *Braden v. United States*, 365 U.S. 431.

Defendant's last contention is that if RSA 588:8-a (supp) is held to empower the Attorney General in the

circumstances of this case, to require defendant to answer questions, this statute is in contravention of the Fourteenth Amendment. This is for the reason, in the words of his brief, "that the danger to the State, which must be present to warrant action under a statute like c. 588, s. 8A has not been shown to exist at any time during plaintiff's current attempts to question defendant or in fact for years prior thereto."

As we have stated previously in this opinion the investigation of Communist Party activities in this state is within the power of our Legislature and the authority granted to its investigating committee, the Attorney General. Because of the nature of the Communist Party it is a proper and permissible subject of constant scrutiny by the Legislature. *Gibson v. Florida Legislative Investigation Com.*, 372 U.S. 539, 547. A defendant's own past or present membership in the Party is within the purview of such an investigation. *Id.* The nexus between the defendant and subversive activities disclosed by the report offered in evidence by the Attorney General and properly admitted by the Court, furnished adequate justification for his present interrogation of the defendant. The decisions in No. 44 *American Committee for Protection of Foreign Born v. Subversive Activities Control Board* [380 U.S. 503], 33 L. W. 4336, and No. 65 *Veterans of Abraham Lincoln Brigade v. Subversive Activities Control Board* [380 U.S. 513], 33 L. W. 4339 (decided April 26, 1965) are not apposite to the situation existing in this case. This exercise by the State of its power adequately to inform itself in order to act and protect its legitimate and vital interests has not been "pressed, in this instance, to a point where it has come into fatal collision with the overriding constitutionally protected rights" of the defendant. *Uphaus v. Wyman*, 360 U.S. 72, 81.

Exceptions overruled.

DUNCAN, J., concurred in the result; the others concurred.

DUNCAN, J., *concurring*: The 1957 statute, under which this proceeding was instituted in 1963, directs the Attorney General to make an investigation of "violations" of the "Subversive Activities Act of 1951," or of "information . . . relating to" such violations. RSA 588:8-a (supp). Section 8-a and my views concerning it have not changed since it was under consideration four years ago in a prior proceeding against this defendant. See *Wyman v. DeGregory*, 103 N.H. 214, 218-219. The foundation for the most recent order that the defendant answer questions propounded by the Attorney General is once again the report made by Attorney General Wyman to the Legislature in 1955. However, I am bound to accept as decided law the interpretation placed upon § 8-a, *supra*, by a majority of this court in *Wyman v. DeGregory*, *supra*, since affirmed by *DeGregory v. Attorney General of New Hampshire*, 368 U.S. 19, and therefore concur in the order entered today.

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FILED

SEP 10 1965

JOHN F. DAVIS, CLERK

Supreme Court of the United States

October Term, 1965

396

No. _____

Hugo DeGregory, Appellant

v.

**Attorney General of the
State of New Hampshire, Appellee**

Motion to Dismiss and/or Affirm

THE STATE OF NEW HAMPSHIRE

By

WILLIAM MAYNARD

Attorney General

R. PETER SHAPIRO

Assistant Attorney General

JOSEPH F. GALL

Special Assistant

State House

Concord, New Hampshire

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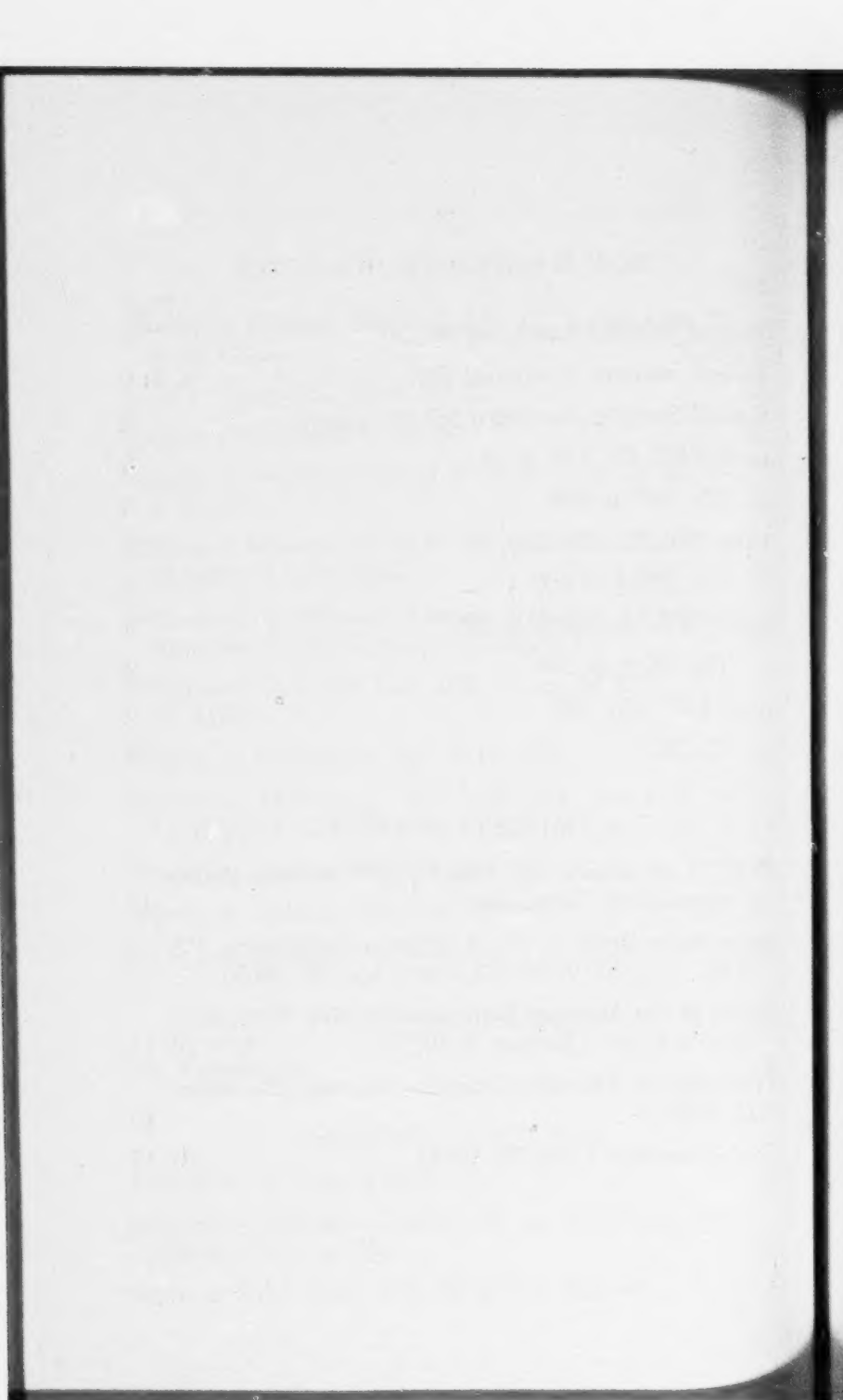
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Supreme Court of the United States

October Term, 1965.

No. _____

HUGO DeGREGORY, Appellant

v.

ATTORNEY GENERAL OF THE
STATE OF NEW HAMPSHIRE, Appellee

PRELIMINARY STATEMENT

Appellee, Attorney General of the State of New Hampshire, in conformity with Rule 16 of this Honorable Court, respectfully submits the following Motion to Dismiss the appeal of Hugo DeGregory, Appellant, and/or to Affirm the decision of the New Hampshire Supreme Court, 209 A. 2d 712, (1965), to be reported in Volume 106, New Hampshire Reports, on the grounds specified in said Motion.

STATEMENT OF THE CASE

The various Attorneys General of the State of New Hampshire, pursuant to legislative mandate, acting as a legislative fact-finding committee, have, since 1953, extensively investigated the subject of subversion, and particularly communism as it relates to the State of New Hampshire. The overriding motive for said legislative mandate is the self-preservation and protection of the State which can best be accomplished by a fact-finding committee, in this instance the Attorney General, garnering relevant data to pre-

sent to the Legislature. Said data shall be the basis for possible future legislation to effectuate the self-preservation and protection of the State.

Since June 12, 1955 the Appellant has been summonsed as a witness to testify as to his knowledge of past and present membership in and activities of the Communist Party in and affecting New Hampshire. The Supreme Court of New Hampshire and the United States Supreme Court have always upheld the actions of the Attorney General and the validity of the investigatory statutes while overruling Appellant. In spite of the many previous court rulings Appellant continues to assume a belligerent posture and refuses to testify as requested.

Pursuant to the decisions of the courts in *Wyman v. DeGregory*, 103 N.H. 214, 368 U.S. 19, 7 L ed 2d 86, 82 S.Ct. 137 the Appellant on November 12, 1963 purged himself of contempt by appearing at the Hillsborough County Court House and answering in the negative the question "Are you presently a member of the Communist Party?" This is the only answer Appellant has ever given to the Attorneys General.

Because of the need for facts which could only be elicited from Appellant by extensive and detailed questioning concerning Communist Party activities and membership in and affecting New Hampshire, present and past, further proceedings under the continuing investigatory authority of the delegated Legislative Committee were initiated on November 22, 1963. Appellant appeared and refused to answer certain questions propounded to him on the theory that the Attorney General had not laid a foundation upon which he could initiate his investigation and base his examination of Appellant. Whereupon the matter, as required by RSA 491:20, was transferred to the Superior Court. On May 20, 1964 Appellant was held in contempt of court for his failure to answer questions propounded to him by the Attorney

General . The Court held that the Attorney General had laid the proper foundations to enable him to interrogate Appellant regarding the communist movement in New Hampshire.

A reserved case was filed and entered in the New Hampshire Supreme Court on October 22, 1964. The New Hampshire Supreme Court affirmed the decision of the Superior Court of May 27, 1964. This matter is now before the United States Supreme Court pursuant to Title 28, U.S. Code, §1257(2).

MOTION TO DISMISS AND/OR AFFIRM

I. NO SUBSTANTIAL FEDERAL QUESTION IS INVOLVED

Now comes the Appellee, Attorney General of the State of New Hampshire, and respectfully moves that the appeal of Hugo DeGregory, Appellant, as more particularly described in the Jurisdictional Statement filed by Appellant with this Honorable Court, be dismissed and/or the judgment of the Supreme Court of New Hampshire in 106 N.H. ____, 209 A.2d 712 be affirmed on the grounds that no substantial Federal question is involved.

A. NO SUBSTANTIAL FEDERAL QUESTION IS PRESENTED IN THE DECISION OF THE NEW HAMPSHIRE SUPREME COURT, AFFIRMING APPELLANT'S CONTEMPT CITATION, IN THAT THIS HONORABLE COURT HAS, ON BASICALLY THE SAME FACTS, DISMISSED A PRIOR APPEAL OF APPELLANT AND AFFIRMED THE DECISION OF THE NEW HAMPSHIRE SUPREME COURT WHICH DECIDED THE SAME ISSUE AS RAISED IN THIS APPEAL AS WELL AS OTHER ISSUES.

This Honorable Court affirmed the decision of the New Hampshire Supreme Court whereby Appellant raised simi-

lar and broader issues of law than herein presented. *Wyman v. DeGregory*, 103 N.H. 214, 368 U.S. 19, 7 L ed 2d 86, 82 S.Ct. 137 (1961) Previously Appellant raised the following issues: The constitutionality on its face of the New Hampshire statute, RSA 588, and its specific application to Appellant; the limitation of *Pennsylvania v. Nelson*, 350 U.S. 497, 100 L.ed. 640, 76 Sup. Ct. 477 (1956) on State action in the area of subversive activities; the grant of immunity to Appellant in relation to his personal rights under the 5th Amend. of the U. S. Constitution. The only issue raised in the present case is the constitutionality of New Hampshire RSA 588 as applied by the New Hampshire Court on the record of the case. The unconstitutionality of said statute on its face is not, nor never has been raised.

Defendant's Brief—N. H. Supreme Ct., p. 3: (*Maynard v. DeGregory*, 106 N.H. —, 209 A 2d 712, Dec'd. April 30, 1965)

"In view of this Court's previous ruling on the statute here involved (*Wyman v. De Gregory*, 103 N.H. 214), defendant is not relitigating here the issue of whether R.S.A. Chapter 588:8-a is unconstitutional on its face. We are arguing that the power of the Attorney General under the statute is limited, and that on the record, he has exceeded the permissible limits in seeking to question defendant in this proceeding. . . ."

Besides the appointment of a new Attorney General the only different fact present in the present proceeding as distinguished from the prior proceedings is the passage of time occasioned solely by Appellant in the exercise of his appellate rights and privileges. Previously Appellant has used the courts as a sword to cut off further State action. DeGregory's appellate process having been exhausted by a judicial decision upholding State action, he has now resorted

to using the same courts as a shield to bar State action. The specific issue raised herein not being a substantial federal question and having been previously answered by this Honorable Court, the time is now overdue when the merry-go-round must stop and the Legislature be permitted to fulfill its proper function.

B. NO FEDERAL QUESTION IS PRESENTED BY THE DECISION OF THE NEW HAMPSHIRE LEGISLATURE TO APPOINT THE ATTORNEY GENERAL AND HIS STAFF AS A LEGISLATIVE INVESTIGATING COMMITTEE TO INQUIRE AS TO SUBVERSIVE ACTIVITIES IN AND AFFECTING THE STATE OF NEW HAMPSHIRE; NOR IS THERE QUESTION THAT THE INFORMATION SOUGHT BY THE ATTORNEY GENERAL WAS IN FACT DESIRED BY THE LEGISLATURE.

Self-preservation is a basic function of government in our democratic form of society. *Wyman v. DeGregory*, 103 N.H. 214, 368 U.S. 19, 7 L.ed 2d 86, 82, S. Ct. 137; *Dennis v. U.S.*, 341 U.S. 494, 95 L.ed. 1137, 71 Sup. Ct. 857; *Gitlow v. New York*, 268 U.S. 652, 69 L.ed. 1138, 45 Sup. Ct. 625. The State has the right to defend itself from subversion in the manner provided by the New Hampshire Legislature. *Wyman v. DeGregory*, 103 N.H. 214, 368 US 19, 7 L ed 2d 86, 82 S. Ct. 137; *Wyman v. Uphaus*, 101 N.H. 139, 360 U.S. 72, 3 L ed 2d 1090, 79 S. Ct. 1040 (1960). Fact-finding investigation by a State Legislature in furtherance of a legitimate end is proper and necessary to form a basis of knowledge and fact whereby the Legislature can serve its function of review, repeal, amendment and enactment of legislation. *Kilbourn v. Thompson*, 103 U.S. 168, 26 L.ed. 377, *McGrain v. Daugherty*, 273 U.S. 135, 71 L.ed. 580; *Sinclair v. U.S.*, 279 U.S. 263, 73 L.ed. 692, 49 S. Ct. 268; *Journey v. MacCracken*, 294 U.S. 125, 79 L.ed. 802, 55 S. Ct. 375.

The question of whether or not to be informed as to the existence of subversion and communism as it affects the security of the State of New Hampshire is a matter of legislative and not judicial determination. *Wyman v. DeGregory*, 103 N.H., 214, 368 U.S. 19; 7 L ed 2d 86, 82, S. Ct. 137 *Uphaus v. Wyman*, 101 N.H. 139, 360 U.S. 72, 3 L ed 2d 1090, 79 S. Ct. 1040 (1960). There can be no doubt that the Legislature still wishes to be informed on these subjects.

Wyman v. Uphaus, 101 N.H. 139, 140 (1957)

"The legislative history (of New Hampshire Laws 1955, Chapter 197) makes it clear beyond a reasonable doubt that it did and does desire an answer to these questions."

The status of the Attorney General acting as a legislative investigating committee with certain time limitation was changed by the legislature to that of a continuously operative body. N. H. Laws 1957, Ch. 178, p. 213.

On Wednesday, July 10, 1957, the General Court of New Hampshire under suspension of the Rules adopted by more than a two-thirds vote (275—24 in the House; 16—6 in the Senate) a Resolution to the effect that the General Court authorized the questions put and wanted and continues to want the information which is sought.

N.H. Laws 1957, Chapter 347, p. 538:

"JOINT RESOLUTION RELATIVE TO INTERPRETATION OF LEGISLATIVE INTENT ON SUBVERSIVE ACTIVITIES.

Whereas, the attorney general has for several years been conducting a fact-finding investigation of subversive activities in New Hampshire for the general court pursuant to law, and

Whereas, by the laws of this state the attorney general for these purposes has been found by the Supreme Court of New Hampshire to be a constitutionally delegated legislative committee of this body, and

Whereas, in the course of the aforesaid investigation one Paul M. Sweezy refused to respond to questions of the attorney general which questions and report thereof was made by the attorney general to this legislature on January 5, 1955, and

Whereas, in decreeing the questions put to Sweezy were put without authority, the United States Supreme Court on June 17, 1957, stated that,

'The lack of any indication that the Legislature wanted the information the attorney general attempted to elicit from petitioner must be treated as the absence of authority.'

Now therefore be it

Resolved by the Senate and House of Representatives in General Court convened:

THAT this general court is, and for a long time has been, familiar with the questions put to Paul M. Sweezy by the attorney general acting in this state, authorized these questions, wanted and continues to want the information which is sought by these questions, and has enacted this resolution for the specific purpose of removing the doubt which has been expressed by the United States Supreme Court '. . . neither we nor the State Courts have any assurance that the questions petitioner refused to answer fall into a category of matters upon

which the Legislature wanted to be informed when it initiated this inquiry.'
[Approved July 11, 1957.]"

Thereafter the Legislature continually has evidenced a desire to be informed by the Attorney General of subversive activity in and affecting New Hampshire. N.H. Laws, 1961, Ch. 224:1, p. 33, Ch. 225:1, p. 402; N.H. Laws 1963, Ch. 198:1, p. 201, Ch. 199:1, p. 298; N.H. Laws 1965, Ch. 239, Ch. 282.

C. NO FEDERAL QUESTION IS PRESENTED BY THE FOUNDATIONS LAID BY THE ATTORNEY GENERAL WITH RESPECT TO THE SUBJECT MATTER UNDER INVESTIGATION AND APPELLANT'S RELATION THERETO.

The provisions of N.H. RSA 588:8-a (supp) require that in order to question Appellant the Attorney General must establish (1) that he has information which he deems reasonable or reliable relating to violations of the provisions of RSA 588 and (2) that he has reasonable cause to believe that the defendant has evidence pertinent to the subject under investigation.

Even a cursory reading of *The Report of the Attorney General to the New Hampshire General Court*, (January 5, 1955) would indicate that Communist Party activity has centered in and affects the State of New Hampshire. There can be no dispute that the Communist movement exists today and its goal is the overthrow of our democratic form of government. The Communist movement has played a dominant role in the foreign policy and internal security of the United States since the close of World War II. *Barenblatt v. U.S.*, 360 U.S. 109, 128, 129; 3 L ed 2d 1115, 79 S. Ct. 1081; *Wyman v. DeGregory*, 103 N.H. 214, 368 U.S. 197 L ed 2d 86, 82 S. Ct. 137; *Watkins v. U.S.*, 354 U.S. 178 1 L ed 2d 1273, 77 S. Ct. 1178; *Gibson v. Florida Legis-*

lative Committee, 372 U.S. 539, 9 L ed 2d 929, 83 S. Ct. 889. One need only pick up a newspaper or turn on a newscast to be acquainted with Communism and its heinous goals. It would be totally unrealistic, in light of the aforementioned principles, to hold that the Attorney General did not have reasonable or reliable information as to the existence of the Communist movement. See *Wyman v. DeGregory*, 103 N.H. 214 368 U.S. 19, 7 L. ed 2d 86, 82 S. Ct. 137.

It is not incumbent upon the legislative fact-finding committee to establish on the record to Appellant's satisfaction that there was probable cause that he violated the provisions of N.H. RSA 588. It need only be shown that there is a nexus or relationship between the subject under inquiry and the witness upon which to base the inquiry. *Uphaus v. Wyman*, 360 U.S. 72, 78-80; 3 L ed 2d 1090, 79 S. Ct. 1040; *Sweezy v. Wyman*, 100 N.H. 103, 108; *Wyman v. DeGregory*, 103 N.H. 214, 216, 368 U.S. 19 7 L ed 2d 86, 82 S. Ct. 137. The Attorney General has clearly established such a nexus, in that he has reasonable and reliable information of Appellant's participation in the Communist Party, as an officer, a presiding officer at conferences in New Hampshire, and in numerous other party activities. *The Report of The Attorney General to New Hampshire General Court*, January 5, 1955) pp. 204-206. Also see, *Wyman v. DeGregory*, 368 U.S. 19, 7 L.ed. 2d 86, 82 S. Ct. 137

D. NO FEDERAL QUESTION IS PRESENTED BY THE FOUNDATION LAID BY THE ATTORNEY GENERAL WITH RESPECT TO APPRISING APPELLANT OF THE TOPIC UNDER INQUIRY AND THE CONNECTIVE REASONING WHEREBY THE PRECISE QUESTIONS RELATE TO IT.

It is "Black Letter Law" that the Appellant should be apprised of the topic under inquiry and the connective reasoning whereby the precise questions relate to it; however, the matter if indisputably clear need not be stated for the rec-

ord. *Barenblatt v. U.S.*, 360 U.S. 109, 124 3 L ed 2d 1115, 79 S. Ct. 1081; *Watkins v. U.S.*, 354 U.S. 178, 214, 215, 1 L ed 2d 1273, 77 S. Ct. 1178

Nowhere in the record does Appellant claim he is unaware of the topic under investigation or the reason for his interrogation. It would be totally unrealistic for Appellant to claim otherwise in view of his long controversy with the Attorney General, which has taken him through the New Hampshire and U.S. Supreme Courts on numerous occasions, and in view of the record of the instant case. *Transcript of Attorney General's Hearing November 22, 1963*, pp 1-4; *Trial Transcript*, May 20, 1964, pp 2-19; *The Report of the Attorney General to the New Hampshire General Court*, January 5, 1955.

E. NO FEDERAL QUESTION IS PRESENTED IN REGARD TO THE TESTS EMPLOYED BY THE NEW HAMPSHIRE COURTS IN DETERMINING THE PROPRIETY OF THE ACTION OF THE ATTORNEY GENERAL RELATIVE TO APPELLANT.

The New Hampshire Supreme Court has long been involved in the area of subversive activities. *Nelson v. Wyman* 99 N.H. 33 (1954); *Wyman v. Uphaus* 100 N.H. 436 (1957); *Wyman v. Sweezy* 100 N.H. 103 (1956); *Kahn v. Wyman* 100 N.H. 245 (1956); *Wyman v. Uphaus* 101 N.H. 139 (1957); *Wyman v. DeGregory* 101 N.H. 171 (1957); *Wyman v. Uphaus* 102 N. H. 461 (1960); *Wyman v. DeGregory* 103 N. H. 214 (1961); *Maynard v. DeGregory* 106 N.H.—209 A 2d 712 (decided April 30, 1965).

The United States Supreme Court has clearly advised the New Hampshire Supreme Court as to the appropriate tests to be employed in evaluating the propriety of the Attorney General's action. *Sweezy v. Wyman* 354 U.S. 234, 1 L ed 2d 1311, 77 S.Ct. 1203 (1957); *Uphaus v. Wyman* 355 U.S. 16, 2 L ed 2d 22, 78 S. Ct 57 (1957).

It is abundantly clear that the New Hampshire Supreme Court has previously employed the proper tests to determine the validity of the Attorney General's action as a legislative fact finding committee. *Uphaus v. Wyman* 360 U.S. 72, 3 L ed 2d 1090, 79 S. Ct. 1040 (1959); *Wyman v. DeGregory* 368 U.S. 19, 7 L ed 2d 86, 82 S. Ct. 137 (1961). (both decisions upheld state action).

There can be no doubt that in the present matter the New Hampshire Supreme Court applied to the facts the appropriate legal tests as they have done in the past. The Court has examined the nature of the subject under inquiry and the relation of Appellant thereto. It thereupon weighed this state action against the constitutional rights of the Appellant and upheld the state action.

Maynard v. DeGregory, 106 N.H., 209 A 2d 712 (Dec'd. April 30, 1965)

"This exercise by the state of its power adequately to inform itself in order to act and protect its legitimate and vital interests has not been 'pressed, in this instance, to a point where it has come into fatal collision with the over-riding constitutionally protected rights' of the defendant. *Uphaus v. Wyman*, 360 U.S. 72, 81."

II. THE CASES OF AMERICAN COMMITTEE FOR PROTECTION OF FOREIGN BORN V. SUBVERSIVE ACTIVITIES CONTROL BOARD; AND VETERANS OF THE ABRAHAM LINCOLN BRIGADE V. SUBVERSIVE ACTIVITIES CONTROL BOARD ARE NOT CONTROLLING.

Veterans of the Abraham Lincoln Brigade v. Subversive Activities Control Board 380 U.S. 503 and *American Committee for Protection of Foreign Born v. Subversive Activities Control Board* 380 U.S. 59 do not deal with legislative

investigations but solely with the area of registration. The aforementioned cases do not dispute the proposition espoused in *Gibson v. Florida Legislative Investigation Committee* 372 U.S. 539 9 L ed 2d 929, 83 S. Ct. 889 that the basic nature of the Communist Party renders it a proper and permissible subject of constant scrutiny by the Legislature. They hold only that in order to require registration by a "Communist Front organization" as defined under §7 of the Subversive Activities Control Act, 64 Stat. 987, 993, 50 U.S.C., §786 requires a showing of present involvement of the organization to be dealt with.

It is axiomatic that the basis for requiring registration, and/or the denial or granting of a license requires a relation to present activity of the party involved; on the other hand, the legislative fact-finding committee need only show a proper subject to investigate and, that there is a nexus with it and the witness either past or present. In registration the principal object of control must relate to present activity, the principal object is not the communist movement but the "Front organization". In this legislative fact-finding investigation the principal object of control is the Communist movement and not the witness. The inherent nature of the communist movement renders it a permissive area of legislative inquiry. *Gibson v. Florida Legislative Investigation Committee*, 372 U.S. 539, 9 L ed 2d 929, 83 S. Ct. 889 (1953) One would have to close his eyes to reality to say that communism was a stale subject and could not be investigated without a further showing of proof of its presence on today's political, social, and economic scenes. Would Appellant have the Attorney General give evidence of the Berlin Wall; Cuban Missile Sites; the dead and wounded in Viet Nam; the Alger Hiss, Sobel and Able spy trials; the hidden microphones in our embassies and government buildings? The law does not require the State to investigate and act only when the tentacles of communist aggression have infiltrated into our very homes. *Wyman v. DeGregory* 103

N.H. 214, 368 U.S. 19, 7 L ed 2d 86, 82 S. Ct. 137. It is beyond dispute that the nature of the communist movement coupled with *The Report of the Attorney General to the New Hampshire General Court January 5, 1965* serves as a proper basis for the Attorney General to carry on his present subversive investigation for the Legislature.

A. NO FEDERAL QUESTION IS INVOLVED IN THE DEMAND FOR THE PARTICULAR INFORMATION REQUESTED BY THE ATTORNEY GENERAL.

Once the proper foundations have been laid to examine a witness, the scope of interrogation is limited only by the requirement of relevancy. *U.S. v. Orman*, 207 F. 2d. 148 (1953); *U.S. v. Josephson*, 165 F. 2d. 82 (1947); *Rumely v. U.S.*, 345 U.S. 41 97 L ed 770, 73 S. Ct. 543 (1953); *Barenblatt v. U.S.*, 109, 3 L. ed 2d 1115, 79 S. Ct. 1081; *McGrain v. Daugherty*, 273 U.S. 360 135 71 L. ed 580 (1927); *In re Chapman* 166 U.S. 661 41 L. ed. 1154 (1897). See: 33 *BU Law Review* 337 (1953) Liacos, "Rights of Witnesses Before Congressional Committee." The term "relevant" as here used is broader than in the trial of a case and encompasses inquiry, the answer to which would be reasonably concerned with the main object of the investigation. *U.S. v. Orman*, 207 F. 2d. 148, 153; *Sinclair v. U.S.*, 279 U.S. 263, 299, 73 L. ed. 692, 49 S. Ct. 268.

The questions propounded to Appellant, *trial transcript*, pp. 20-31, relate to the main topic of inquiry. (i.e. the Communist movement). Appellant contends that no inquiry of past events is permissible or relevant. Such reasoning is purely fallacious. The obvious starting point of the Attorney General's inquiry is to determine what subversive activity and who were the parties involved therein that related to New Hampshire. Such inquiry has been held permissible. *Nelson v. Wyman*, 99 N.H. 33, 39; *Uphaus v. Wyman*, 360 U.S. 72, 78. A knowledge of the past is necessary to lay the cornerstone for future study.

Communist Party of the United States v. Subversive Activities Control Board, 367 U.S. 1, 68, 6 L. ed. 625, 81 S. Ct. 1357 (1961).

"Where the current character of an organization and the nature of its connection with others is at issue, of course past conduct is pertinent. Institutions like other organisms, are predominately what their past has made them. History provides the illuminating context within which the implications of present conduct may be known."

CONCLUSION

The New Hampshire Supreme Court in deciding the issues raised properly applied the law espoused in *Sweezy v. Wyman*, 354 U.S. 234, 1 L. ed. 2d 1311, 77 S. Ct. 1203; *Gibson v. Florida Legislative Investigating Committee*, 372 U.S. 539, 9 L. ed. 2d 929, 83 S. Ct. 889; *Uphaus v. Wyman*, 360 U.S. 72, 3 L. ed. 2d 1090, 79 S. Ct. 1040 and the cases cited in its opinion. (*Maynard v. DeGregory*, 106 N.H. 209 A. 2d. 712 to the facts of this case in holding that the interest of the people had not been pressed to the point of fatal collision with Appellant's constitutionally protected rights. Again this Honorable Court is called upon to rule on an issue which is based on almost identical facts which it has previously decided. *Wyman v. DeGregory*, 368 U.S. 19. 7 L. ed. 2d 86, 82 S. Ct. 137. How long will Appellant be permitted to burden the courts with these dilatory tactics under the guise of proper appellate process?

For the several reasons argued herein the Appellee respectfully requests that Appellant's appeal be dismissed and the decision of the New Hampshire Supreme Court upholding Appellant's contempt citation be affirmed.

Respectfully Submitted,

THE STATE OF NEW HAMPSHIRE

By: William Maynard, Attorney General

R. Peter Shapiro, Assistant Attorney General

Joseph F. Gall, Special Assistant

September 8, 1965

Appendix A

Merrimack,
No. 4890.

LOUIS C. WYMAN, *Attorney General*

v.

HUGO DEGREGORY.

Argued December 6, 1960.

Decided March 20, 1961.

1. Laws 1957, c. 178, s. 2 directing the Attorney General whenever he has information which he deems reasonable or reliable relating to violations of the provisions of the subversive activities act (RSA ch. 588) to make full and complete investigation thereof and report the results to the General Court with his recommendations for legislation does not require that there must be a violation of the Act before the legislative investigation can be conducted.
2. The fact that previous legislation (Laws 1953, c. 307, and Laws 1955, cc. 197, 340) authorizing the Attorney General to conduct investigation of subversive activities contained the words "to determine whether subversive persons . . . are presently located within the state" and the subsequent enactment (Laws 1957, c. 178, s. 2) did not contain that language does not restrict the powers of the Attorney General under the latter statute to investigations of only violations of the subversive activities act (RSA ch. 588).
3. Where the Attorney General has reasonable and reliable information relating to violations of the subversive activities act (RSA ch. 588) he is authorized by Laws 1957, c. 178, s. 2 to ask the witness, previously granted immunity in accordance with Laws 1959, c. 279, the ques-

tion whether he is presently a member of the Communist Party, and upon the witness' refusal to answer when so directed by the Superior Court he may be confined for civil contempt under the provisions of RSA 491:19, 20.

4. Such inquiry is pertinent and is not violative of the First Amendment to the Constitution of the United States; nor does such investigation violate the separation of powers provision of the State Constitution (Pt. I, Art. 37th).

PETITION, by the Attorney General under RSA 491:19, 20 for an order to compel compliance by the defendant with a subpoena served upon him on February 2, 1960 in a legislative investigation of subversive activities conducted by the Attorney General pursuant to Laws 1957, c. 178, s. 2, effective June 14, 1957, which now appears as RSA 588:8-a (supp).

The defendant, both at the investigation conducted by the Attorney General and at the hearing conducted by the Superior Court on June 28, 1960, was requested to answer the question: "Are you presently a member of the Communist Party?" The defendant had previously on February 8, 1960 been granted immunity pursuant to Laws 1959, c. 279. In the present proceeding the defendant has not claimed the privilege against self-incrimination in refusing to answer this question. Upon the defendant's continued refusal to answer the question he was adjudged in contempt by the Superior Court and ordered committed. The Trial Court refused to admit the defendant to bail and this issue was argued before this court on July 14, 1960, and the defendant was ordered released on bail on July 19, 1960, pending the present appeal. *Wyman v. DeGregory*, 102 N. H. 564.

The defendant's exceptions to the Court's order of commitment were reserved and transferred by *Morris, J.*

Louis C. Wyman, Attorney General (by brief and orally), *pro se.*

James C. Cleveland and Howard S. Whiteside (of Massachusetts) (*Mr. Whiteside orally*), for the defendant.

PER CURIAM. The resolution of the questions in this appeal has been held in abeyance following the oral argument awaiting receipt of certain opinions pending in the Supreme Court of the United States. Two of such opinions recently decided on February 27, 1961 are No. 37 *Wilkinson v. United States* and No. 54 *Braden v. United States*.

The defendant's committal for civil contempt for failure to answer the question "Are you presently a member of the Communist Party?" originates under the provisions of RSA 588:8-a (supp) (Laws 1957, c. 178, s. 2). The pertinent part of that statute reads as follows: "588:8-a. ATTORNEY GENERAL. At any time when the attorney general has *information which he deems reasonable or reliable relating to violations of the provisions of this chapter* he shall make full and complete investigation thereof and shall report to the general court the results of this investigation, together with his recommendations, if any, for legislation. In any investigation hereunder the attorney general or any duly authorized member of his staff is authorized to require by subpoena or otherwise the attendance of such witnesses and the production of such correspondence, books, papers and documents and to administer such oaths, and to take such testimony and to make such expenditures within the funds provided as he deems advisable. . . ." (Emphasis supplied).

It is the defendant's contention that the present statute no longer permits the Attorney General "to determine whether subversive persons . . . are presently located within this state" since that language which appeared in the previous legislation (Laws 1953, c. 307 and Laws 1955, cc. 197 and 340) does not appear in these words in RSA 588:8-a (supp) as enacted in 1957. [It is argued that the Attorney General is now confined to investigating only "vio-

lations" of RSA ch. 588 and therefore there is no basis for investigating subversive persons or for the investigation of the defendant.

We think it is clear from the history of the legislation in this field in this state that that was not the intent of the Legislature and that it was not what the Legislature said. RSA 588:8-a (supp). This statute does not require that there must be a violation of law before the legislative investigation can be set in motion. It only requires that there be reasonable and reliable information "relating" to violations of the provisions of RSA ch. 588. The statute specifically provides that the results of the investigation shall be reported to the Legislature together with the Attorney General's "recommendations, if any, for legislation." This clearly indicates that the Legislature has demanded a report as to whether further legislation in the field of subversive activities is required.]

The definitions of a "subversive person" and a "subversive organization" in RSA 588:1 as supplemented by specific tests for determining what constitutes participation in a subversive organization by RSA 588:3-a (supp), Laws 1955, c. 181, indicate no purpose to discontinue the legislative investigation. *Wyman v. Uphaus*, 102 N. H. 461, 463. While it is true that the emphasis has been changed from an investigation of the location of subversive persons to those who have taken some active part as members or by participation in an alleged subversive organization (RSA 588:3-a (supp)), the purpose to continue the investigation is not in doubt. *Wyman v. Uphaus*, 102 N. H. 461, 463. See Sixth Report of N. H. Judicial Council, 48, 47 (1956) and particularly recommendation 5. Our decision in *Uphaus v. Wyman*, 102 N. H. 517, 518, did not say that legislation was limited to investigations of violations of law.

[There are those who think that such a legislative investigation may be pointless, dangerous and ineffective (particu-

larly on a state basis) and there are others who think it desirable and necessary. But the wisdom or lack of wisdom in authorising and financing such an investigation still remains a matter for legislative rather than judicial determination.] *Uphaus v. Wyman*, 81 S. Ct. 153 (1960); No. 54 *Braden v. United States*, and No. 37 *Wilkinson v. United States*, both decided February 27, 1961.

The evidence and the exhibits convinced the Trial Court, as they do this court, that the Attorney General had reasonable and reliable information relating to violations of RSA ch. 588, which provided a valid and relevant basis for the investigation of the defendant. The question that he was asked "Are you presently a member of the Communist Party?" is a pertinent one (*Barenblatt v. United States*, 360 U. S. 109, 125); there is no doubt that the defendant and his counsel understood it and that, in spite of divided opinions, it does not violate First Amendment rights. No. 54 *Braden v. United States*, No. 37 *Wilkinson v. United States*, *supra*.

The contention that such investigation violates the separation of powers of our Constitution (Const. Pt. I, Art. 37th) has already been decided adversely to the defendant in *Wyman v. Uphaus*, 102 N. H. 461. See *Nelson v. Wyman*, 99 N. H. 33. The proposition that the Superior Court had no authority under RSA 491:19, 20 to find the defendant in civil contempt because the legislative committee is not an "official or board" within the meaning of that statute is without merit. *State v. Matthews*, 37 N. H. 450, 453. See *Wyman v. Uphaus*, 102 N. H. 461.

Under the majority opinions of the Supreme Court of the United States and under the decisions of this court we can find no constitutional infirmity in the order of civil contempt issued by the Trial Court.

Exceptions overruled.

WHEELER, J., did not sit; DUNCAN, J., dissented.

DUNCAN, J. *dissenting*: The proceedings now before the court are distinct from those considered in *Wyman v. DeGregory*, 100 N. H. 163 and 101 N. H. 171, having been instituted under a more recent statute. Laws 1957, c. 178, s. 2. See *Wyman v. DeGregory*, 102 N. H. 564. Ostensibly the 1957 statute was enacted to provide the Attorney General with some semblance of permanent authority, in place of the temporary investigatory powers conferred upon him as a legislative committee by earlier acts and resolutions. Laws 1953, c. 307; Laws 1955, cc. 197, 340. The bald fact is that in revising the statute the Legislature struck out the earlier direction "to determine whether subversive persons . . . are presently located within this state" (Laws 1953, c. 307, *supra*) upon which the validity of the prior investigation depended under the decision. See *Nelson v. Wyman*, 99 N. H. 33, 38, 39; *Wyman v. Sweezy* 100 N. H. 103, 110, 113; *Wyman v. Uphaus*, 100 N. H. 436, 441, 450; *Sweezy v. New Hampshire*, 354 U. S. 234, 236, 246; *Uphaus v. Wyman*, 360 U. S. 72; *Uphaus v. Wyman*, 81 S. Ct. 153, 154, 158 (1960).

The Attorney General is now charged solely with the duty of making investigation of "violations" of the provisions of the subversive activities act (Laws 1957, c. 178, s. 2, *supra*) a function which the same act likewise specifically entrusted to grand juries. Laws 1957, c. 178, s. 1. See RSA 588:2, 8-a (supp). I cannot avoid the conclusion that this change has substantially altered the whole character of the investigation in a way which renders the present investigation vulnerable under provisions of the Constitutions of New Hampshire and of the United States, more especially since the 1955 Report on Subversive Activities by the Attorney General to the General Court (*pp.* 9, 61, 204) makes it plain that he regards this defendant as a probable violator of the law. In view of the interpretation placed upon the

1957 act by the majority of the court, an exposition of my views with respect to the constitutional issues would be superfluous.

Appendix B

No. 237, Misc. HUGO DeGREGORY, Appellant, v ATTORNEY GENERAL OF NEW HAMPSHIRE.
368 US 19, 7 L ed 2d 86, 82 S Ct 137.

Appeal from the Supreme Court of New Hampshire.

October 23, 1961. Per Curiam: The judgment is affirmed.

The Chief Justice, Mr. Justice Black, Mr. Justice Douglas and Mr. Justice Brennan dissent.

Same case below, 103 NH 214, 169 A2d 1.

Howard S. Whiteside for appellant.

Gardner C. Turner, Attorney General of New Hampshire, pro se.

Appendix C.

OPINION OF SUPREME COURT OF NEW HAMPSHIRE.
Merrimack,
No. 5298.

WILLIAM MAYNARD, ATTORNEY GENERAL

v.

HUGO DE GREGORY

Argued January 5, 1965.

Decided April 30, 1965.

Petition under RSA 491:19, 20 to compel the defendant to answer certain questions asked him in a legislative investigation of subversive activities by the Attorney General pursuant to the provisions of RSA 588:8-a (supp).

When directed by the Trial Court (*Loughlin, J.*) to answer the propounded questions, defendant refused. He informed the Court he was not invoking his privilege against self incrimination. The Court adjudged him in contempt and ordered him committed to jail for a period of one year or until he purged himself of contempt. However, he was released on his own recognizance pending this appeal.

William Maynard, Attorney General, *R. Peter Shapiro*, Assistant Attorney General, and *Joseph F. Gall*, Special Assistant to the Attorney General (*Messrs. Shapiro and Gall orally*) for the Attorney General.

Lawrence J. Walsh and *Howard S. Whiteside* (of Massachusetts) (*Mr. Whiteside orally*) for the defendant.

LAMPRON, J. The first issue raised by the defendant is whether under the circumstances of this case the Attorney General has power under RSA 588:8-a (supp) to question him and whether the Superior Court has power to commit him for his refusal to answer the questions asked.

RSA 588:8-c (supp) reads in part as follows: "At any time when the Attorney General has information which he deems reasonable or reliable relating to violations of the provisions of this chapter he shall make full and complete investigation thereof and shall report to the General Court the results of this investigation, together with his recommendations, if any, for legislation."

We held in *Wyman v. De Gregory*, 103 N.H. 214, 216, 217, that this "statute does not require that there must be a violation of law before the legislative investigation can be set in motion. It only requires that there be reasonable and reliable information 'relating' to violations of the provisions of RSA Ch. 588" relating to subversive activities. This judgment was affirmed by the United States Supreme Court. *De Gregory v. Attorney General of New Hampshire*, 368 U.S. 19. That Court, as recently as March, 1963, reaffirmed the broad inherent power of a Legislature to conduct investigations "concerning the administration of existing laws as well as proposed or possibly needed statutes." *Gibson v. Florida Legislative Investigation Com.*, 372 U.S. 539, 545. See Annot. 3 L. Ed. 2d 1647, 1650.

The defendant argues, however, that the Attorney General did not comply with RSA 588:8-a (supp) in that he failed to show (1) that he "has information which he deems reasonable or reliable relating to violations of the provisions of" RSA ch. 588, and (2) that he has reasonable cause to believe that the defendant has evidence pertinent to the subject under investigation.

It has long been recognized that the tenets of the Communist Party include the overthrow of government by force and violence. *Nelson v. Wyman*, 99 N.H. 33, 50; *Barenblatt v. United States*, 360 U.S. 109, 128. That the State of New Hampshire has an interest in the preservation of its govern-

ment against the menace of Communist subversion is firmly established. *Nelson v. Wyman, supra*; *Gibson v. Florida Legislative Investigation Com.*, 372 U.S. 539, 547. Furthermore our Legislature has manifested a continuing concern to be kept informed by its investigating committee, the Attorney General, as to the need of "further legislation in the field of subversive activities." *Wyman v. De Gregory*, 103 N.H. 214, 217; RSA 588:8-a (supp); Laws 1961, 224:1 (p. 311) and 225:1 (p. 402); Laws 1963, 198:1 (p. 201) and 199:1 (p. 298).

In the present proceeding instituted in 1963 the Attorney General introduced in evidence a report to the Legislature, made by a prior Attorney General, showing the existence of a Communist Party and Communist influence in New Hampshire and the probable continuance of such activities in our state. Report of the Attorney General to New Hampshire General Court (January 5, 1955). In prior proceedings beginning in February 1960, the Attorney General attempted to obtain information from the defendant, which he is still seeking in the present proceedings. We hold that given the nature of the Communist movement and its mode of operation the above report could constitute information which the Attorney General could deem reasonable or reliable relating to violations of RSA ch. 588 and the proper basis for his present investigation of subversive activities on behalf of the Legislature. *Wyman v. De Gregory*, 103 N.H. 214, 217; *De Gregory v. Attorney General of New Hampshire*, 368 U.S. 19; *Gibson v. Florida Legislative Investigation Com.*, 372 U.S. 539, 547.

It was also stated in the above report that the then Attorney General had reliable information concerning defendant's participation in the Communist Party as an officer, a presiding officer at conferences in New Hampshire, and in numerous other party activities. (pp. 204-206). When questioned by the Attorney General on November 22,

1963, and also in the Superior Court in the hearing which is the basis of this appeal, the defendant made the following statement: "I am not now a member of the Communist Party and have not been at any time since the authority you have cited, RSA 588:8-a; that I have no knowledge of any Communist activities in New Hampshire during this period or of any violations of RSA 588 during this period of six and one-half years." Even if taken at its face value, this statement does not render otherwise proper and pertinent information regarding his prior contacts and involvements with the Communist Party and its members in this State beyond the legitimate interest and jurisdiction of the Attorney General acting as the investigating committee of the Legislature. *Nelson v. Wyman*, 99 N.H. 33, 39; *Uphaus v. Wyman*, 360 U.S. 72, 78.

We hold, as we did in *Wyman v. De Gregory*, 103 N.H. 214, 217, that the Attorney General had reasonable and reliable information relating to violations of RSA ch. 588 which provided a valid and relevant basis for the investigation of the defendant. We hold further that the Superior Court could properly hold the defendant in contempt under RSA 491:19, 20 for his refusal to answer whether he was ever a member, a paid member, or an officer of the Communist Party; if he ever had access to or control of membership or financial records of the Party in New Hampshire or attended Party meetings; the extent of control of the Party activities in this state exerted by a Party unit in Boston of which he is alleged to have been an officer; if he attended Party meetings in New Hampshire where advocacy of the overthrow of the Government took place or persons conspired to so do; also questions as to his knowledge about the books, records or files of the Party in this state and about his contributions to its support. *Uphaus v. Wyman*, 360 U.S. 72; *Barenblatt v. United States*, 360 U.S. 109; *Wilkinson v. United States*, 365 U.S. 399; *Braden v. United States*, 365 U.S. 431.

Defendant's last contention is that if RSA 588:8-a (supp) is held to empower the Attorney General in the circumstances of this case, to require defendant to answer questions, this statute is in contravention of the Fourteenth Amendment. This is for the reason, in the words of his brief, "that the danger to the State, which must be present to warrant action under a statute like c. 588, s. 8A has not been shown to exist at any time during plaintiff's current attempts to question defendant or in fact for years prior thereto."

As we have stated previously in this opinion the investigation of Communist Party activities in this state is within the power of our Legislature and the authority granted to its investigating committee, the Attorney General. Because of the nature of the Communist Party it is a proper and permissible subject of constant scrutiny by the Legislature. *Gibson v. Florida Legislative Investigation Com.*, 372 U.S. 539, 547. A defendant's own past or present membership in the Party is within the purview of such an investigation. *Id.* The nexus between the defendant and subversive activities disclosed by the report offered in evidence by the Attorney General and properly admitted by the Court, furnished adequate justification for his present interrogation of the defendant. The decisions in No. 44 *American Committee for Protection of Foreign Born v. Subversive Activities Control Board* [380 U.S. 503], 33 L. W. 4336, and No. 65 *Veterans of Abraham Lincoln Brigade v. Subversive Activities Control Board* [380 U.S. 513], 33 L. W. 4339 (decided April 26, 1965) are not apposite to the situation existing in this case. This exercise by the State of its power adequately to inform itself in order to act and protect its legitimate and vital interests has not been "pressed, in this instance, to a point where it has come into fatal collision with the overriding constitutionally protected rights" of the defendant. *Uphaus v. Wyman*, 360 U.S. 72,81.

Exceptions overruled.

DUNCAN, J., concurred in the result; the others concurred.

DUNCAN, J., *concurring*: The 1957 statute, under which this proceeding was instituted in 1963, directs the Attorney General to make an investigation of "violations" of the "Subversive Activities Act of 1951," or of "information . . . relating to" such violations. RSA 588:8-a (supp). Section 8-a and my views concerning it have not changed since it was under consideration four years ago in a prior proceeding against this defendant. See *Wyman v. DeGregory*, 103 N.H. 214, 218-219. The foundation for the most recent order that the defendant answer questions propounded by the Attorney General is once again the report made by Attorney General Wyman to the Legislature in 1955. However, I am bound to accept as decided law the interpretation placed upon § 8-a, *supra*, by a majority of this court in *Wyman v. DeGregory*, *supra*, since affirmed by *DeGregory v. Attorney General of New Hampshire*, 368 U.S. 19, and therefore concur in the order entered today.

Appendix D

CHAPTER 588.

SUBVERSIVE ACTIVITIES.

588:1 DEFINITIONS. For the purpose of this chapter "organization" means an organization, corporation, company, partnership, association, trust, foundation, fund, club, society, committee, political party, or any group of persons, whether or not incorporated, permanently or temporarily associated together for joint action or advancement of views on any subject or subjects.

"Subversive organization" means any organization which engages in or advocates, abets, advises, or teaches, or a purpose of which is to engage in or advocate, abet, advise, or teach activities intended to overthrow, destroy or alter, or to assist in the overthrow, destruction or alteration of, the constitutional form of government of the United States, or of the state of New Hampshire, or of any political subdivision of either of them, by force, or violence.

"Foreign subversive organization" means any organization directed, dominated or controlled directly or indirectly by a foreign government which engages in or advocates, abets, advises, or teaches, or a purpose of which is to engage in or to advocate, abet, advise, or teach, activities intended to overthrow, destroy, or alter, or to assist in the overthrow, destruction or alteration of the constitutional form of government of, the United States, or of the state of New Hampshire, or of any political subdivision of either of them, and to establish in place thereof any form of government the direction and control of which is to be vested in, or exercised by or under, the domination or control of any foreign government, organization, or individual; but does not and shall not be construed to mean an organization the *bona fide*

purpose of which is to promote world peace by alliances or unions with other governments or world federations, unions of governments to be effected through constitutional means.

"Foreign government" means the government of any country or nation other than the government of the United States of America or one of the states thereof.

"Subversive person" means any person who commits, attempts to commit, or aids in the commission, or advocates, abets, advises or teaches, by any means any person to commit, attempt to commit or aid in the commission of any act intended to overthrow, destroy or alter, or to assist in the overthrow, destruction or alteration of, the constitutional form of the government of the United States, or of the state of New Hampshire, or any political subdivision of either of them, by force, or violence, or who is a member of a subversive organization or a foreign subversive organization.

SEDITION.

588:2 FELONIES. It shall be a felony for any person knowingly and wilfully to

(a) commit, attempt to commit, or aid in the commission of any act intended to overthrow, destroy, or alter, or to assist in the overthrow, destruction or alteration of the constitutional form of the government of the United States, or of the state of New Hampshire, or any political subdivision of either of them, by force or violence; or

(b) advocate, abet, advise or teach by any means any person to commit, attempt to commit, or assist in the commission of any such act under such circumstances as to constitute a clear and present danger to the security of the United States, or of the state of New Hampshire or of any political subdivision of either of them; or

(c) conspire with one or more persons to commit any such act; or

(d) assist in the formation or participate in the management or to contribute to the support of any subversive organization or foreign subversive organization knowing said organization to be a subversive organization or a foreign subversive organization; or

(e) destroy any books, records or files, or secrete any funds in this state of a subversive organization or a foreign subversive organization, knowing said organization to be such.

Any person who shall be convicted by a court of competent jurisdiction of violating any of the provisions of this section shall be fined not more than twenty thousand dollars, or imprisoned for not more than twenty years, or both, at the discretion of the court.

588:3 PENALTY. It shall be a felony for any person after August 1, 1951 to become, or after November 1, 1951 to remain a member of a subversive organization or a foreign subversive organization knowing said organization to be a subversive organization or foreign subversive organization. Any person who shall be convicted by a court of competent jurisdiction of violating this section shall be fined not more than five thousand dollars, or imprisoned for not more than five years, or both, at the discretion of the court.

588:3-a EVIDENCE OF MEMBERSHIP OR PARTICIPATION. In determining membership or participation in a subversive organization or a foreign subversive organization as defined in this chapter, or knowledge of the purpose or objective of such organization, the jury, under instructions from the court, may consider evidence, if presented, as to whether the accused person to his knowledge:

- (1) Has been listed as a member in any book or any of the lists, records, correspondence, or any other document of the organization;

- (2) Has made financial contribution to the organization in dues, assessments, loans, or in any other form;
- (3) Has made himself subject to the discipline of the organization in any form whatsoever;
- (4) Has executed orders, plans, or directives of any kind of the organization;
- (5) Has acted as an agent, courier, messenger, correspondent, organizer, or in any other capacity in behalf of the organization;
- (6) Has conferred with officers or other members of the organization in behalf of any plan or enterprise of the organization;
- (7) Has been accepted as an officer or member of the organization or as one to be called upon for services by other officers or members of the organization;
- (8) Has written, spoken or in any other way communicated by signal, semaphore, sign or in any other form of communication orders, directives, or plan of the organization;
- (9) Has prepared documents, pamphlets, leaflets, books or any other type of publication in behalf of the objectives and purposes of the organization;
- (10) Has mailed, shipped, circulated, distributed, delivered, or in any other way sent or delivered to others materials or propaganda of any kind in behalf of the organization;
- (11) Has advised, counseled or in any other way imparted information, suggestions, recommendations to officers or members of the organization or to anyone else in behalf of the objectives of the organization;

- (12) Has indicated by word, action, conduct, writing or in any other way a willingness to carry out in any manner and to any degree the plans, designs, objectives, or purposes of the organization;
- (13) Has in any other way participated in the activities, planning, actions, objectives, or purposes of the organization;
- (14) The enumeration of the above subjects of evidence on membership or participation in a subversive organization or a foreign subversive organization as above defined, shall not limit the inquiry into and consideration of any other subject of evidence on membership and participation as herein stated.

588:3-b CONSTRUCTION OF PROVISION. Nothing in the preceding section shall be construed to limit the supervisory power of the court over the admission and exclusion of evidence or over the sufficiency of the evidence as a whole.

588:4 BARRED FROM OFFICE. Any person who shall be convicted by a court of competent jurisdiction of violating any of the provisions of sections 2 and 3 of this chapter, in addition to all other penalties therein provided, shall from the date of such conviction be barred from:

(a) holding any office, elective or appointive, or any other position of profit or trust in or employment by the government of the state of New Hampshire or of any agency thereof or of any county, municipal corporation or other political subdivision of said state;

(b) filing or standing for election to any public office in the state of New Hampshire.

588:5 DISSOLUTION OF ORGANIZATIONS. It shall be unlawful for any subversive organization or foreign subversive organization to exist or function in the state of New

Hampshire and any organization which by a court of competent jurisdiction is found to have violated the provisions of this section shall be dissolved, and if it be a corporation organized and existing under the laws of the state of New Hampshire, a finding by a court of competent jurisdiction that it has violated the provisions of this section shall constitute legal cause for forfeiture of its charter and its charter shall be forfeited, and all funds, books, records and files of every kind and all other property of any organization found to have violated the provisions of this section shall be seized by and for the state of New Hampshire, the funds to be deposited in the state treasury and the books, records, files and other property to be turned over to the attorney general of New Hampshire.

588:6 ASSISTANCE FURNISHED. For the collection of any evidence and information referred to in this chapter, the attorney general is hereby directed to call upon the superintendent of the state police, and county and municipal police authorities of the state to furnish him such assistance as may from time to time be required. Such police authorities are directed to furnish information and assistance as may be from time to time so requested. The attorney general may testify before any grand jury as to matters referred to in this chapter as to which he may have information.

588:7 RECORDS. The attorney general shall maintain complete records of all information received by him and all matters handled by him under the requirements of this chapter. Such records as may reflect on the loyalty of any resident of this state shall not be made public nor divulged to any person except with the permission of the attorney general to effectuate the purposes thereof.

588:8 GRAND JURY INQUIRIES. The superior court, when in its discretion it appears appropriate, or when informed by the attorney general that there is information or

evidence of the character described in section 2 of this chapter to be considered by the grand jury, shall charge the grand jury to inquire into violations of this chapter for the purpose of proper action.

588:8-a ATTORNEY GENERAL. At any time when the attorney general has information which he deems reasonable or reliable to violations of the provisions of this chapter he shall make full and complete investigation thereof and shall report to the general court the results of this investigation, together with his recommendations, if any, for legislation. In any investigation hereunder the attorney general or any duly authorized member of his staff is authorized to require by subpoena or otherwise the attendance of such witnesses and the production of such correspondence, books, papers and documents and to administer such oaths, and to take such testimony and to make such expenditures within the funds provided as he deems advisable. The provisions of section 7 of this chapter shall be inapplicable to the investigation provided for herein and the attorney general is hereby authorized to make public such information received by him, testimony given before him, and matters handled by him as he deems fit to effectuate the purposes hereof.

LOYALTY.

588:9 EMPLOYMENT. No subversive person, as defined in this chapter, shall be eligible for employment in, or appointment to any office, or any position of trust or profit in the government of, or in the administration of the business of this state, or of any county, municipality, or other political subdivision, of this state.

588:10 WRITTEN STATEMENTS REQUIRED. Every person and every board, commission, council, department, court or other agency of the state of New Hampshire, or any political subdivision thereof, who or which appoints or employs

or supervises in any manner the appointment or employment of public officials or employees shall establish by rules, regulations or otherwise, procedures designed to ascertain before any person, including teachers, and other employees of any public educational institution in this state, is appointed or employed, that he or she as the case may be, is not a subversive person, and that there are no reasonable grounds to believe such persons are subversive persons. In the event such reasonable grounds exist, he or she as the case may be, shall not be appointed or employed. In securing any facts necessary to ascertain the information herein required, the applicant shall be required to sign a written statement containing answers to such inquiries as may be material, which statement shall contain notice that it is subject to the penalties of perjury.

588:11 EXCEPTIONS. The inquiries prescribed in section 10 other than the written statement to be executed by an applicant for employment, shall not be required as a prerequisite to the employment of any persons in the classification of laborers in any case in which the employing authority shall in his or its discretion determine and by rule or regulation specify the reasons why, the nature of the work to be performed is such that employment of persons as to whom there may be reasonable grounds to believe that they are subversive persons as defined in this chapter will not be dangerous to the health of the citizens or the security of the government of the United States, the state of New Hampshire or any political subdivision thereof.

588:12 PRESENT EMPLOYEES. Every person, who on August 1, 1951 shall be in the employ of the state of New Hampshire or of any political subdivision thereof, other than those now holding elective office shall be required on or before October 1, 1951 to make a written statement which shall contain notice that it is subject to the penalties of perjury, that he or she is not a subversive person as defined in

this chapter, namely, any person who commits, attempts to commit, or aids in the commission, or advocates, abets, advises or teaches by any means any person to commit, attempt to commit, or aid in the commission of any act intended to overthrow, destroy or alter, or to assist in the overthrow, destruction or alteration of, the constitutional form of the government of the United States, or of the state of New Hampshire, or any political subdivision of either of them, by force, or violence; or who is a member of a subversive organization or a foreign subversive organization, as more fully defined in this chapter. Such statement shall be prepared and execution required by every person and every board, commission, council, department, court, or other agency of the State of New Hampshire or any political subdivision thereof responsible for the supervision of employees under its jurisdiction. Any such person failing or refusing to execute such a statement or who admits he is a subversive person as defined in this chapter shall immediately be discharged.

588:13 DISCHARGE OF PERSONNEL; HEARING. Reasonable grounds on all the evidence to believe that any person is a subversive person, as defined in this chapter shall be cause for discharge from any appointive office or other position of profit or trust in the government of or in the administration of the business of this state, or of any county, municipality or other political subdivision of this state, or any agency thereof. The personnel commission shall, by appropriate rules or regulations, prescribe that persons charged with being subversive persons, as defined in this chapter, shall be accorded notice and opportunity to be heard, in accordance with the procedures prescribed by law for discharges for other reasons. Every person and every board, commission, council, department, or other agency of the state of New Hampshire or any political subdivision thereof having responsibility for the appointment, employment or supervision of public employees not covered by the

state classified service shall establish rules or procedures similar to those required herein for classified services for a hearing for any person charged with being a subversive person, as defined in this chapter after notice and opportunity to be heard. Every employing authority discharging any person pursuant to any provision of this chapter shall promptly report to the attorney general the fact of and the circumstances surrounding such discharge. A person discharged under the provisions of this section shall have the right within thirty days thereafter to appeal to the superior court of the county where such person may reside for a determination by such court (with the aid of a jury if the appellant so elects) as to whether or not the discharge appealed from was justified under the provisions of this act. The court shall speedily hear and determine such appeals, and from the judgment of the court, there shall be a further appeal to the supreme court of New Hampshire as in civil cases.

588:14 DECLARATIONS OF CANDIDATES. No person shall become a candidate for election to, nor qualify for, any public office under the election laws of this state unless he or she shall file with the declaration of candidacy, or prior to qualifying, an affidavit that he or she is not a subversive person as defined in this chapter. No declaration of candidacy shall be received for filing by any town or city clerk or by the secretary of state unless accompanied by the affidavit aforesaid and there shall not be entered upon any ballot or voting machine at any election the name of the person who has failed or refused to make the affidavits aforesaid.

588:15 FALSE STATEMENTS. Every written statement made pursuant to this chapter by an applicant for appointment or employment, or by any employee shall be deemed to have been made under oath if it contains a declaration preceding the signature of the maker to the effect that it is made under the penalties of perjury. Any person who makes

a material misstatement of fact (a) in any such written statement, or (b) in any affidavit made pursuant to the provisions of this chapter, or (c) under oath in any hearing conducted by any agency of the state, or of any of its political subdivisions, pursuant to this chapter, or (d) in any written statement by an applicant for appointment or employment or by an employee in any state aid institution of learning in this state, intended to determine whether or not such applicant or employee is a subversive person as defined in this chapter, which statement contains notice that it is subject to the penalties of perjury shall be subject to the penalties of perjury prescribed in chapter 587, RSA.

588:16 TITLE. This chapter may be cited as the "Subversive Activities Act of 1951."

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Supreme Court of the United States.

OCTOBER TERM, 1965.

No. 396.

HUGO DEGREGORY,
Appellant,

v.

ATTORNEY GENERAL OF THE STATE OF
NEW HAMPSHIRE,
Appellee.

ON APPEAL FROM THE SUPREME COURT OF NEW HAMPSHIRE.

BRIEF FOR APPELLANT.

Opinion Below.

The opinion of the New Hampshire Supreme Court (R. 34-39) is reported in 106 New Hampshire Rep. 262; 209 A. 2d 712.

Jurisdiction.

The judgment of the Supreme Court of New Hampshire was rendered on April 30, 1965. Notice of appeal to the Supreme Court of the United States was filed on May 28, 1965. Appellant's jurisdictional statement was filed on July 27, 1965. On October 18, 1965, this Court noted

probable jurisdiction. The jurisdiction of this Court rests on 28 U.S. Code, § 1257 (2).

The Statute Involved.

New Hampshire Revised Statutes Annotated, c. 588, § 8-a, provides as follows:

“ATTORNEY GENERAL. At any time when the attorney general has information which he deems reasonable or reliable relating to violations of the provisions of this chapter he shall make full and complete investigation thereof and shall report to the general court the results of this investigation, together with his recommendations, if any, for legislation. In any investigation hereunder the attorney general or any duly authorized member of his staff is authorized to require by subpoena or otherwise the attendance of such witnesses and the production of such correspondence, books, papers and documents and to administer such oaths, and to take such testimony and to make such expenditures within the funds provided as he deems advisable. The provisions of section 7 of this chapter shall be inapplicable to the investigation provided for herein and the attorney general is hereby authorized to make public such information received by him, testimony given before him, and matters handled by him as he deems fit to effectuate the purposes hereof.”

Other pertinent statutes appear in the appendix.

Questions Presented.

Whether New Hampshire Revised Statutes Annotated, c. 588, § 8-a, as applied by the New Hampshire Court on

the record of this case, violates due process of law under the Fourteenth Amendment to the United States Constitution, and whether it violates appellant's rights under the First and Fourth Amendments of the United States Constitution as applied to the states by the Fourteenth Amendment.

Statement of the Case.

In November of 1963 appellee Attorney General, purporting to act under N.H. R.S.A. c. 588, § 8-a, caused a subpoena to be served on appellant, ordering him to appear for questioning on November 22, 1963. On that day the Attorney General started to question DeGregory, and asked: "Have you ever been a member of the Communist Party?" (R. 27). Objection was made, and a lengthy colloquy of counsel ensued, during which appellee purported to offer a justification for the questioning. Eventually, DeGregory replied as follows:

"I would like to state, Mr. Gall, that I am not now a member of the Communist Party and have not been at any time since the authority you have cited, RSA 588:8-a: that I have no knowledge of any Communist activities in New Hampshire during this period or of any violations of RSA 588 during this period of six and one-half years. In fact, I am not even aware of the existence of a Communist Party in the state of New Hampshire at any time the authority you have cited, Section 8-a, has been on the statute books, and in view of the foregoing I do not understand what I have to face here today."

Appellee continued to ask questions, most of which DeGregory refused to answer, after inquiring as to what pe-

ried the questions related and being told that they related to "any time" (R. 31-34).

Thereafter, appellee filed a petition in the Supreme Court for Merrimack County, New Hampshire, under the provisions of R.S.A. 491, §§ 19 and 20, praying that DeGregory be held in contempt for failure to answer relevant questions (R. 2-4). Appellee duly filed an answer, asserting his constitutional objections to the proceeding (R. 4, 5).

A court hearing was held on May 20, 1964, at which the Superior Court ruled that, on the basis of State's Exhibit 1 (1955 Report of the Attorney General), appellee was entitled to question DeGregory (R. 14), even though DeGregory repeated the statement under oath he had made at the previous hearing (R. 15). Finally the Court ordered DeGregory committed for contempt for one year or until he was purged, and released him on his own recognizance pending appeal (R. 22).

On a reserved case, in which all questions of law raised at the proceedings were reserved and transferred (R. 2), the Supreme Court of New Hampshire affirmed the decision of the lower Court (R. 34-39).

Thereafter this appeal was taken.

Summary of Argument.

Appellant DeGregory, by the decisions of the New Hampshire Courts, has been deprived of due process of law and of his First and Fourth Amendment rights as applied to the states by the Fourteenth Amendment.

Because of the broad area of federal pre-emption, a State investigation of subversive activities can only be constitutionally carried on where the State can show that its legitimate and vital interests warrant the overriding of the protected rights of the individual. The New Hampshire

Courts' construction of the investigating statute (R.S.A. c. 588, § 8-a), as applied in the circumstances of the case, permits the State investigating power to proceed beyond its constitutional limitations.

If it be established that an investigation is valid, it is still the duty of the investigating authority to furnish a basis of probable cause to show that the summoning of a particular witness can be expected to furnish information in furtherance of the investigation. Appellee in the instant case has failed to furnish such probable cause. The New Hampshire Courts, in failing to require of appellee that he establish such probable cause, have infringed the rights of appellant under the United States Constitution.

Argument.

I.

BACKGROUND OF THE STATUTE AND OF THIS CASE.

The New Hampshire Subversive Activities Act (R.S.A. c. 588) was passed in 1951. In 1953 the General Court passed an Act authorizing the Attorney General, as a one-man legislative committee, to investigate in this field (Laws of 1953, c. 307). This authority was continued until 1957, when the present statute was passed (Laws of 1955, c. 197; R.S.A. c. 588, § 8-a, as inserted by Laws of 1957, c. 178) (R. 2).

It was the first Act which was involved in the cases of—

Sweezy v. New Hampshire, 354 U.S. 234.

Uphaus v. Wyman, 360 U.S. 72.

The present statute, enacted in June of 1957, changed the previous authority by striking out reference to investigation of subversive persons, and confined the area of investigation to violations of R.S.A. c. 588.

The 1957 Act was upheld by the New Hampshire Supreme Court in *Wyman v. DeGregory*, 103 N.H. 214; affirmed per curiam by this Court, *DeGregory v. Attorney General of New Hampshire*, 368 U.S. 19, the Chief Justice and Justices Black, Brennan and Douglas dissenting.

It was in 1955 that the then Attorney General first summoned DeGregory. That case too went to the higher Courts on the issue of the scope of a State grant of immunity (*Wyman v. DeGregory*, 101 N.H. 171; appeal dismissed, *DeGregory v. Wyman*, 360 U.S. 717). However, after that decision the Attorney General dropped the petition and filed a completely new proceeding, already referred to, in which this Court passed on the statute involved here (R. 8). The only question there involved was: "Are you presently a member of the Communist Party?" After the decision of this Court, DeGregory purged himself of contempt by answering the question in the negative. Very shortly thereafter the Attorney General again summoned DeGregory, in November, 1963, and so the present case began (R. 8).

II.

PERMISSIBLE BASIS OF A STATE'S INVESTIGATION OF SUBVERSIVE ACTIVITIES.

This whole brief is devoted to showing that appellant has been deprived of due process of law under the Fourteenth Amendment, and of his First and Fourth Amendment rights, as applied to the States by the Fourteenth Amendment.

It is DeGregory's position that an investigation of subversive activities as authorized by the New Hampshire statute cannot legally go forward without some compelling reason being shown. The Attorney General must satisfy the New Hampshire Court—

1. That the legitimate and vital interests of the State warrant the investigation.

2. That a witness summoned for questioning must be shown to have such a connection or nexus with the subject of a legitimate investigation that his questioning is in furtherance of it.

It is DeGregory's contention that appellee has not met either test in this case.

As to the first, the statute authorizes the Attorney General to investigate when he has "information which he deems reasonable and reliable relating to violations" of the Subversive Activities Act (c. 588).

The cases decided in this Court in the past dozen years certainly have settled once and for all the question of whether the investigating body can use merely a subjective standard, or whether, when the matter gets to the Courts, the Courts have a duty to ascertain whether the investigation is constitutionally warranted, and, indeed, whether the investigator is proceeding within his legislative authority.

United States v. Rumely, 345 U.S. 41.

Sweezy v. New Hampshire, 354 U.S. 234.

Watkins v. United States, 354 U.S. 178.

Uphaus v. Wyman, 360 U.S. 72.

Jordan v. Hutcheson, 323 F. 2d 597 (4th Cir.).

The New Hampshire Courts have decided that appellee was acting within the statutory power, and we are therefore left with the question of the constitutionality of the statute as so construed, and as applied to the record herein.

Mapp v. Ohio, 367 U.S. 643, squarely held that "the Fourth Amendment's right of privacy has been declared enforceable against the States through the Due Process Clause of the Fourteenth" (p. 655).

We shall not labor the point that an investigation of the nature of that conducted by the Attorney General of New Hampshire infringes on the right of privacy of a witness. There are some circumstances in which the need of the State is so urgent that such an infringement may be upheld. This is not such a case.

In *Watkins v. United States*, 354 U.S. 178, this Court provided pertinent reminder of the First Amendment's applicability to Congressional investigations. At page 197 it was said that an investigation is part of lawmaking. "The First Amendment may be invoked against infringement of the protected freedoms by law or by lawmaking."

First will be considered what was the basis or foundation of the Attorney General's investigation, and what actually he is seeking to investigate.

We find it very hard to determine what the Attorney General is seeking to investigate in this case. When DeGregory stated that he was not even aware of the existence of a Communist Party in New Hampshire since the passage of R.S.A. c. 588, § 8-a, he further said: "I do not understand what I have to face here today" (R. 30).

The only reply of appellee was: "Well, we have some questions to ask you" (R. 30). In the ensuing questioning the only question which was tied down to any date at all was: "Were you a Communist Party member on June 28, 1960?" to which DeGregory replied: "I have already answered that question, Mr. Gall" (R. 31). The further questions were unlimited as to time, but, in view of DeGregory's opening statement (R. 30), they obviously did not deal with any period subsequent to June, 1957, since that period had been fully covered by DeGregory.

Reliance is placed by the New Hampshire Courts solely on the 1955 Report of the Attorney General to the Legislature to justify the Attorney General's investigation. The

Courts held that the report satisfied the statutory requirement of reasonable and reliable information of violations of the Subversive Activities Act (N.H. R.S.A. c. 588). This construction of the Act was held within the power of the State to act and protect its legitimate and vital interests without having been pressed "to a point where it has come into fatal collision with the overriding" protected rights of the defendant. *Uphaus v. Wyman*, 360 U.S. 72, 81.

For several reasons this report is too weak a reed to support the State's action. In the *Uphaus* case, also, the 1955 Report was relied on as the proper constitutional basis of investigation. It should be pointed out that four members of this Court dissented in *Uphaus*, 360 U.S. 72, 82. The opinion of Brennan, J., analyzes in detail the Attorney General's report. *Uphaus v. Wyman*, 360 U.S. 88, 95.

The opinion concludes that the report "discloses an investigation in which the processes of law-making and law-evaluating were submerged entirely in exposure of individual behavior—in adjudication, of a sort, however much disclaimed, through the exposure process." *Uphaus v. Wyman*, p. 101.

At least, however, in the context of the *Uphaus* case, the report was dealing with matters of the fairly recent past, and activities in New Hampshire. There was on the record, decided the majority, a sufficient foundation to warrant the investigation under review, and a sufficient nexus to require the production of World Fellowship lists.

Turn to the instant case. There is a general discussion of world Communism in the early 1950's and before in the report, and descriptive matter on the Communist Party of New Hampshire of the same period and earlier, a treatment of fields such as education and labor, a discussion of certain organizations, and biographical material on certain individuals, of whom appellant is one. There is on pages 204-206 of the report some account of alleged acts and as-

sociations of DeGregory, mostly in the 1930's and 1940's. Only two references were as late as 1953, and they were "mild stuff indeed," which certainly could not be inflated into a showing of a peril to the State (R. 23-26).

Add to that the sworn statement of DeGregory, which actually supplies negative answers to all the questions posed by the Attorney General for the period from June of 1957 to the date of the questioning (1963 and 1964). Can there be any doubt that the investigation was of the distant past with no relation to any current information to warrant the questioning? It is this distinguishing circumstance which most vitally makes this an entirely different case from *Uphaus*, and from the previous *DeGregory* case (*DeGregory v. Attorney General of New Hampshire*, 368 U.S. 19). In the previous *DeGregory* case only one question was in issue: "Are you presently a member of the Communist Party?" At least the Attorney General was seeking information then current, and claiming the right to it on the basis of information in the Attorney General's report, which was less stale by four or five years than it is in the present proceeding. In May, 1964, when the report was accepted as evidence by the Superior Court for Merrimack County, it was nine years old, and most of its contents related to events considerably older.

Strikingly similar are the registration cases under the Internal Security Act of 1950 (*Veterans of the Abraham Lincoln Brigade v. Subversive Activities Control Board*, 380 U.S. 513; *American Committee for Protection of Foreign Born v. Subversive Activities Control Board*, 380 U.S. 503).

In his motion to dismiss the appeal, appellee purported to distinguish those cases on the ground that registration or the denial or granting of a license requires a relation to present activity of the party involved, whereas "one would have to close his eyes to reality to say that com-

munism was a stale subject and could not be investigated without a further showing of proof of its presence on today's political, social and economic scenes." He then went on to mention the Berlin Wall, Cuban missile sites, Vietnam, Alger Hiss, spy trials and hidden microphones in government buildings.

In the Superior Court he did even less. He denied that it was necessary to show a danger to the State before the investigation could proceed (R. 13).

All this argument blithely ignores the pre-emption by the Congress of the field of subversive activities.

Pennsylvania v. Nelson, 350 U.S. 497.

The majority opinion in *Uphaus v. Wyman*, 360 U.S. 72, 76, makes clear that the authority of a State in the area is now limited to the field of sedition against the State itself.

The appellee's references to world events are wholly irrelevant and apparently are designed to obscure the fact that he presented no basis for a State investigation other than the 1955 report already discussed. The nature of the world communist movement cannot be assumed to be a present threat to the State of New Hampshire, particularly when no evidence was offered that there is any communist movement in that State. On page 13 of appellee's motion, a report of January 5, 1965 was referred to. It hardly need be said that this is a misprint for 1955 since no 1965 report was ever referred to in the Record.

Appellee, in his motion, placed considerable reliance on *Gibson v. Florida Legislative Investigating Committee*, 372 U.S. 539, a case in which this Court struck down a State investigation of the NAACP. In that case, Goldberg, J., in the majority opinion said: "it is an essential prerequisite to the validity of an investigation which intrudes into the area of constitutionally protected rights of speech,

press, association and petition that the State convincingly show a substantial relation between the information sought and a subject of overriding and compelling state interest" (p. 546).

The Florida Committee relied on *Uphaus v. Wyman*, 360 U.S. 72, *Barenblatt v. United States*, 360 U.S. 109, *Wilkinson v. United States*, 365 U.S. 399, and *Braden v. United States*, 365 U.S. 431. The Court's opinion commented: "In *Barenblatt*, *Wilkinson*, and *Braden*, however, it was a refusal to answer a question or questions concerning the witness' own past or present membership in the Communist Party which supported his conviction" (p. 547).

The opinion went on to speak of the particular nature of the Communist Party as not being an ordinary or legitimate political party.

From this the Attorney General, the appellee herein, would have it that as to such questions the requirement of disclosure of an overriding and compelling State interest and the current nature of the investigation is less strict than in other investigations.

Appellant submits that no such conclusion can be drawn from the cases cited. First of all, *Barenblatt*, *Wilkinson* and *Braden* were all federal investigations, where the interest of the government is not limited by the pre-emption doctrine of *Pennsylvania v. Nelson*, *supra*. Furthermore, in each of these cases the investigating committee was asking for current information, and justified its demand with a showing of foundation or nexus of recent date to the investigation. In such a case this Court could take judicial notice of the force and activities of World Communism.

Contrast the case at bar, in which a State agency, with its power to investigate limited to subjects of compelling State interest, is the interrogator. Take note that DeGregory *did* answer in the negative any membership in, knowledge of, or connection with the Communist Party as

far back as June, 1957. Note also that the investigator offered no showing at all of any Communist activity in New Hampshire more recent than 1954. Where, then, is the "compelling state interest" which alone can justify the abridgement of First Amendment freedoms?

Comments on the State's restricted power to act can be found in a number of recent cases in this Court:

"Where there is a significant encroachment upon personal liberty, the State may prevail only upon showing a subordinating interest which is compelling."

Bates v. Little Rock, 361 U.S. 516, 524.

"The decisions of this Court have consistently held that only a compelling state interest in the regulation of a subject within the State's constitutional power to regulate can justify limiting First Amendment freedoms."

N.A.A.C.P. v. Button, 371 U.S. 415, 438.

The Nexus between DeGregory and the Investigation.

We should mention that the Attorney General also sought to provide foundation or nexus linking DeGregory to the Communist Party by stating that he had in his files sworn testimony of DeGregory's activity in the Communist Party in New Hampshire. He was repeatedly challenged to produce this testimony and to specify to what period it pertained. This he never did, nor did the lower Court order him to do so (R. 10, 11, 14).

Neither the Superior Court nor the Supreme Court of New Hampshire purported to rest its decision on this statement of the Attorney General of unknown witnesses at an unknown period, but solely on the 1955 report (R. 14, 36).

In these circumstances this statement of the Attorney General can and should be ignored. Certainly it does not contribute to any convincing showing of nexus or foundation for determining the validity of the questioning of DeGregory.

We have already shown what the 1955 report has to say of DeGregory. We submit that it supplies no such foundation as to warrant the summoning of DeGregory, even if a showing had been made to justify any current investigation of subversive activities.

Investigation of the Past.

The Attorney General seeks to justify his inquiry into long-past events by citing *Nelson v. Wyman*, 99 N.H. 33, and *Communist Party of the United States v. Subversive Activities Control Board*, 367 U.S. 1. However, both those cases held only that, where current events or the current character of the Communist Party was in issue, past events and conduct were pertinent as ancillary to and having a bearing on the present. Neither case purported to say that an inquiry devoted entirely to long-past events would be constitutionally valid.

Already cited in this brief are *American Committee for Protection of Foreign Born v. Subversive Activities Control Board*, 380 U.S. 503, and *Veterans of the Abraham Lincoln Brigade v. Subversive Activities Control Board*, 380 U.S. 513. In both of these cases it was the staleness of the record which caused this Court to reverse registration orders. We have already dealt with appellee's attempt to modernize this record by reference to world events occurring after 1954, and the reasons why such reference is not here permissible. Failing that, we are left with a record of noteworthy staleness, an investigation not of the present but the long ago, and no tie to the present whatever.

Conclusion.

We submit that this case is an outstanding example of an attempted abuse of a limited State power, of an unconstitutional denial of due process of law and First and Fourth Amendment rights. There has been no showing of a compelling State need which would justify this investigation, no adequate laying of a foundation for pursuing it, and no showing of the other kind of nexus or foundation which would link DeGregory with a subject of valid investigation.

For the several reasons stated, appellant requests reversal of the decision of the Court below, and a dismissal of the contempt proceeding against him.

Respectfully submitted,

HOWARD S. WHITESIDE,

Attorney for HUGO DeGREGORY,

Appellant.

[Appendix follows.]

Appendix.**UNITED STATES CONSTITUTION.***Amendment 1.*

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

[Digest References: Constitutional Law, §§ 925-941.]

Amendment 4.

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

[Digest References: Search and Seizure, §§ 1-16.]

Amendment 14, Section 1.

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

NEW HAMPSHIRE REVISED STATUTES ANNOTATED.**CHAPTER 491.**

Section 19. PETITION. Whenever any official or board is given the power to summon witnesses and take testimony,

but has not the power to punish for contempt, and any witness refuses to obey such summons either as to his appearance or as to the production of things specified in the summons, or refuses to testify or to answer any questions, a petition for an order to compel him to testify or his compliance with the summons may be filed in the Superior Court or with some justice thereof.

Section 20. PROCEDURE. Upon such petition the Court or justice shall have authority to proceed in the matter as though the original proceeding had been in the court and may make orders and impose penalties accordingly.

CHAPTER 588.

SUBVERSIVE ACTIVITIES.

588:1 DEFINITIONS. For the purpose of this chapter "organization" means an organization, corporation, company, partnership, association, trust, foundation, fund, club, society, committee, political party, or any group of persons, whether or not incorporated, permanently or temporarily associated together for joint action or advancement of views on any subject or subjects.

"Subversive organization" means any organization which engages in or advocates, abets, advises, or teaches, or a purpose of which is to engage in or advocate, abet, advise, or teach activities intended to overthrow, destroy or alter, or to assist in the overthrow, destruction or alteration of, the constitutional form of government of the United States, or of the state of New Hampshire, or of any political subdivision of either of them, by force, or violence.

"Foreign subversive organization" means any organization directed, dominated or controlled directly or indirectly by a foreign government which engages in or advocates, abets, advises, or teaches, or a purpose of which is

to engage in or to advocate, abet, advise, or teach, activities intended to overthrow, destroy, or alter, or to assist in the overthrow, destruction or alteration of the constitutional form of government of, the United States, or of the state of New Hampshire, or of any political subdivision of either of them, and to establish in place thereof any form of government the direction and control of which is to be vested in, or exercised by or under, the domination or control of any foreign government, organization, or individual; but does not and shall not be construed to mean an organization the *bona fide* purpose of which is to promote world peace by alliances of unions with other governments or world federations, unions or governments to be effected through constitutional means.

“Foreign government” means the government of any country or nation other than the government of the United States of America or one of the states thereof.

“Subversive person” means any person who commits, attempts to commit, or aids in the commission, or advocates, abets, advises or teaches, by any means any person to commit, attempt to commit or aid in the commission of any act intended to overthrow, destroy or alter, or to assist in the overthrow, destruction or alteration of, the constitutional form of the government of the United States, or of the state of New Hampshire, or any political subdivision of either of them, by force, or violence, or who is a member of a subversive organization or a foreign subversive organization.

SEDITION.

588:2 FELONIES. It shall be a felony for any person knowingly and wilfully to

(a) commit, attempt to commit, or aid in the commission of any act intended to overthrow, destroy, or alter,

or to assist in the overthrow, destruction or alteration of the constitutional form of the government of the United States, or of the state of New Hampshire, or any political subdivision of either of them, by force or violence; or

(b) advocate, abet, advise or teach by any means any person to commit, attempt to commit, or assist in the commission of any such act under such circumstances as to constitute a clear and present danger to the security of the United States, or of the state of New Hampshire or of any political subdivision of either of them; or

(c) conspire with one or more persons to commit any such act; or

(d) assist in the formation or participate in the management or to contribute to the support of any subversive organization or foreign subversive organization knowing said organization to be a subversive organization or a foreign subversive organization; or

(e) destroy any books, records or files, or secrete any funds in this state of a subversive organization or a foreign subversive organization, knowing said organization to be such.

Any person who shall be convicted by a court of competent jurisdiction of violating any of the provisions of this section shall be fined not more than twenty thousand dollars, or imprisoned for not more than twenty years, or both, at the discretion of the court.

588:3 PENALTY. It shall be a felony for any person after August 1, 1951 to become, or after November 1, 1951 to remain a member of a subversive organization or a foreign subversive organization knowing said organization to be a subversive organization or foreign subversive organization. Any person who shall be convicted by a court of competent jurisdiction of violating this section shall be fined not more than five thousand dollars, or imprisoned for not more than five years, or both, at the discretion of the court.

588:3-a EVIDENCE OF MEMBERSHIP OR PARTICIPATION. In determining membership or participation in a subversive organization or a foreign subversive organization as defined in this chapter, or knowledge of the purpose or objective of such organization, the jury, under instructions from the court, may consider evidence, if presented, as to whether the accused person to his knowledge:

- (1) Has been listed as a member in any book or any of the lists, records, correspondence, or any other document of the organization;
- (2) Has made financial contribution to the organization in dues, assessments, loans, or in any other form;
- (3) Has made himself subject to the discipline of the organization in any form whatsoever;
- (4) Has executed orders, plans, or directives of any kind of the organization;
- (5) Has acted as an agent, courier, messenger, correspondent, organizer, or in any other capacity in behalf of the organization;
- (6) Has conferred with officers or other members of the organization in behalf of any plan or enterprise of the organization;
- (7) Has been accepted as an officer or member of the organization or as one to be called upon for services by other officers or members of the organization;
- (8) Has written, spoken or in any other way communicated by signal, semaphore, sign or in any other form of communication orders, directives, or plan of the organization;
- (9) Has prepared documents, pamphlets, leaflets, books or any other type of publication in behalf of the objectives and purposes of the organization;
- (10) Has mailed, shipped, circulated, distributed, delivered, or in any other way sent or delivered to others

materials or propaganda of any kind in behalf of the organization;

- (11) Has advised, counseled or in any other way imparted information, suggestions, recommendations to officers or members of the organization or to anyone else in behalf of the objectives of the organization;
- (12) Has indicated by word, action, conduct, writing or in any other way a willingness to carry out in any manner and to any degree the plans, designs, objectives, or purposes of the organization;
- (13) Has in any other way participated in the activities, planning, actions, objectives, or purposes of the organization;
- (14) The enumeration of the above subjects of evidence on membership or participation in a subversive organization or a foreign subversive organization as above defined, shall not limit the inquiry into and consideration of any other subject of evidence on membership and participation as herein stated.

588:3-b CONSTRUCTION OF PROVISION. Nothing in the preceding section shall be construed to limit the supervisory power of the court over the admission and exclusion of evidence or over the sufficiency of the evidence as a whole.

588:4 BARRED FROM OFFICE. Any person who shall be convicted by a court of competent jurisdiction of violating any of the provisions of sections 2 and 3 of this chapter, in addition to all other penalties therein provided, shall from the date of such conviction be barred from:

(a) holding any office, elective or appointive, or any other position of profit or trust in or employment by the government of the state of New Hampshire or of any agency thereof or of any county, municipal corporation or other political subdivision of said state;

(b) filing or standing for election to any public office in the state of New Hampshire.

588:5 **DISSOLUTION OF ORGANIZATIONS.** It shall be unlawful for any subversive organization or foreign subversive organization to exist or function in the state of New Hampshire and any organization which by a court of competent jurisdiction is found to have violated the provisions of this section shall be dissolved, and if it be a corporation organized and existing under the laws of the state of New Hampshire, a finding by a court of competent jurisdiction that it has violated the provisions of this section shall constitute legal cause for forfeiture of its charter and its charter shall be forfeited, and all funds, books, records and files of every kind and all other property of any organization found to have violated the provisions of this section shall be seized by and for the state of New Hampshire, the funds to be deposited in the state treasury and the books, records, files and other property to be turned over to the attorney general of New Hampshire.

588:6 **ASSISTANCE FURNISHED.** For the collection of any evidence and information referred to in this chapter, the attorney general is hereby directed to call upon the superintendent of the state police, and county and municipal police authorities of the state to furnish him such assistance as may from time to time be required. Such police authorities are directed to furnish information and assistance as may be from time to time so requested. The attorney general may testify before any grand jury as to matters referred to in this chapter as to which he may have information.

588:7 **RECORD.** The attorney general shall maintain complete records of all information received by him and all matters handled by him under the requirements of this chapter. Such records as may reflect on the loyalty of any resident of this state shall not be made public nor divulged

to any person except with the permission of the attorney general to effectuate the purposes thereof.

588:8 GRAND JURY INQUIRIES. The superior court, when in its discretion it appears appropriate, or when informed by the attorney general that there is information or evidence of the character described in section 2 of this chapter to be considered by the grand jury, shall charge the grand jury to inquire into violations of this chapter for the purpose of proper action.

588:8-a ATTORNEY GENERAL. At any time when the attorney general has information which he deems reasonable or reliable relating to violations of the provisions of this chapter he shall make full and complete investigation thereof and shall report to the general court the results of this investigation, together with his recommendations, if any, for legislation. In any investigation hereunder the attorney general or any duly authorized member of his staff is authorized to require by subpoena or otherwise the attendance of such witnesses and the production of such correspondence, books, papers and documents and to administer such oaths, and to take such testimony and to make such expenditures within the funds provided as he deems advisable. The provisions of section 7 of this chapter shall be inapplicable to the investigation provided for herein and the attorney general is hereby authorized to make public such information received by him, testimony given before him, and matters handled by him as he deems fit to effectuate the purposes hereof.

LOYALTY.

588:9 EMPLOYMENT. No subversive person, as defined in this chapter, shall be eligible for employment in, or appointment to any office, or any position of trust or profit in the government of, or in the administration of the busi-

ness of this state, or of any county, municipality, or other political subdivision, of this state.

588:10 WRITTEN STATEMENTS REQUIRED. Every person and every board, commission, council, department, court or other agency of the state of New Hampshire, or any political subdivision thereof, who or which appoints or employs or supervises in any manner the appointment or employment of public officials or employees shall establish by rules, regulations or otherwise, procedures designed to ascertain before any person, including teachers, and other employees of any public educational institution in this state, is appointed or employed, that he or she as the case may be, is not a subversive person, and that there are no reasonable grounds to believe such persons are subversive persons. In the event such reasonable grounds exist, he or she as the case may be, shall not be appointed or employed. In securing any facts necessary to ascertain the information herein required, the applicant shall be required to sign a written statement containing answers to such inquiries as may be material, which statement shall contain notice that it is subject to the penalties of perjury.

588:11 EXCEPTIONS. The inquiries prescribed in section 10 other than the written statement to be executed by an applicant for employment, shall not be required as a prerequisite to the employment of any persons in the classification of laborers in any case in which the employing authority shall in his or its discretion determine and by rule or regulation specify the reasons why, the nature of the work to be performed is such that employment of persons as to whom there may be reasonable grounds to believe that they are subversive persons as defined in this chapter will not be dangerous to the health of the citizens or the security of the government of the United States, the state of New Hampshire or any political subdivision thereof.

588:12 **PRESENT EMPLOYEES.** Every person, who on August 1, 1951 shall be in the employ of the state of New Hampshire or of any political subdivision thereof, other than those now holding elective office shall be required on or before October 1, 1951 to make a written statement which shall contain notice that it is subject to the penalties of perjury, that he or she is not a subversive person as defined in this chapter, namely, any person who commits, attempts to commit, or aids in the commission, or advocates, abets, advises or teaches by any means any person to commit, attempt to commit, or aid in the commission of any act intended to overthrow, destroy or alter, or to assist in the overthrow, destruction or alteration of, the constitutional form of the government of the United States, or of the state of New Hampshire, or any political subdivision of either of them, by force, or violence; or who is a member of a subversive organization or a foreign subversive organization, as more fully defined in this chapter. Such statement shall be prepared and execution required by every person and every board, commission, council, department, court, or other agency of the State of New Hampshire or any political subdivision thereof responsible for the supervision of employees under its jurisdiction. Any such person failing or refusing to execute such a statement or who admits he is a subversive person as defined in this chapter shall immediately be discharged.

588:13 **DISCHARGE OF PERSONNEL; HEARING.** Reasonable grounds on all the evidence to believe that any person is a subversive person, as defined in this chapter shall be cause for discharge from any appointive office or other position of profit or trust in the government of or in the administration of the business of this state, or of any county, municipality or other political subdivision of this state, or any agency thereof. The personnel commission shall, by appropriate rules or regulations, prescribe that

persons charged with being subversive persons, as defined in this chapter, shall be accorded notice and opportunity to be heard, in accordance with the procedures prescribed by law for discharges for other reasons. Every person and every board, commission, council, department, or other agency of the state of New Hampshire or any political subdivision thereof having responsibility for the appointment, employment or supervision of public employees not covered by the state classified service shall establish rules or procedures similar to those required herein for classified services for a hearing for any person charged with being a subversive person, as defined in this chapter after notice and opportunity to be heard. Every employing authority discharging any person pursuant to any provision of this chapter shall promptly report to the attorney general the fact of and the circumstances surrounding such discharge. A person discharged under the provisions of this section shall have the right within thirty days thereafter to appeal to the superior court of the county where such person may reside for a determination by such court (with the aid of a jury if the appellant so elects) as to whether or not the discharge appealed from was justified under the provisions of this act. The court shall speedily hear and determine such appeals, and from the judgment of the court, there shall be a further appeal to the supreme court of New Hampshire as in civil cases.

588:14 DECLARATIONS OF CANDIDATES. No person shall become a candidate for election to, nor qualify for, any public office under the election laws of this state unless he or she shall file with the declaration of candidacy, or prior to qualifying, an affidavit that he or she is not a subversive person as defined in this chapter. No declaration of candidacy shall be received for filing by any town or city clerk or by the secretary of state unless accompanied by the affidavit aforesaid and there shall not be entered upon

any ballot or voting machine at any election the name of the person who has failed or refused to make the affidavits aforesaid.

588:15 FALSE STATEMENTS. Every written statement made pursuant to this chapter by an applicant for appointment or employment, or by any employee shall be deemed to have been made under oath if it contains a declaration preceding the signature of the maker to the effect that it is made under the penalties of perjury. Any person who makes a material misstatement of fact (a) in any such written statement, or (b) in any affidavit made pursuant to the provisions of this chapter, or (c) under oath in any hearing conducted by any agency of the state, or of any of its political subdivisions, pursuant to this chapter, or (d) in any written statement by an applicant for appointment or employment or by an employee in any state aid institution of learning in this state, intended to determine whether or not such applicant or employee is a subversive person as defined in this chapter, which statement contains notice that it is subject to the penalties of perjury shall be subject to the penalties of perjury prescribed in chapter 587, RSA.

588:16 TITLE. This chapter may be cited as the "Subversive Activities Act of 1951."

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JOHN F. DAVIS, CLERK

Supreme Court of the United States

October Term, 1965

No. 396

Hugo DeGregory, Appellant

v.

**Attorney General of the
State of New Hampshire, Appellee**

**Appeal from the Supreme Court of
The State of New Hampshire**

BRIEF FOR APPELLEE

THE STATE OF NEW HAMPSHIRE

By

WILLIAM MAYNARD

Attorney General

R. PETER SHAPIRO

Assistant Attorney General

JOSEPH F. GALL

Special Assistant

State House

Concord, New Hampshire

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STANDARD FORM NO. 64

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Supreme Court of the United States

October Term, 1965

No. 396

HUGO DeGREGORY, Appellant

v.

ATTORNEY GENERAL OF THE
STATE OF NEW HAMPSHIRE, Appellee

APPEAL FROM THE SUPREME COURT
THE STATE OF NEW HAMPSHIRE

BRIEF FOR APPELLEE

STATEMENT OF THE CASE

The various Attorneys General of the State of New Hampshire, pursuant to legislative mandate, acting as a legislative fact-finding committee, have, since 1953, extensively investigated the subject of subversion, and particularly communism as it relates to the State of New Hampshire. The overriding motive for said legislative mandate is the self-preservation and protection of the State, which can best be accomplished by a fact-finding

committee, in this instance the Attorney General, garnering relevant data to present to the legislature. Said data shall be the basis for possible future legislation to effectuate the self-preservation and protection of the State of New Hampshire.

Since June 12, 1955 the Appellant has been summonsed as a witness to testify as to his knowledge of past and present membership in and activities of the Communist Party in and affecting the State of New Hampshire. The Supreme Court of New Hampshire and the United States Supreme Court have consistently upheld the actions of the Attorney General and the validity of the investigating statutes while overruling Appellant. In spite of the many court rulings Appellant continues to assume a stolid posture and refuses to testify as requested.

Pursuant to the decisions of the courts in *Wyman v. DeGregory*, 103 N.H. 214, 169A 2d 1; aff'd 368 U.S. 19, 7 L. ed. 2d 86, 82 S. Ct. 137 (1961) the Appellant on November 12, 1963 purged himself of contempt by appearing at the Hillsborough County Court House and answering in the negative the question "Are you presently a member of the Communist Party?" This is the only direct answer Appellant has ever given to the Attorneys General. The Attorney General, at said hearing, attempted to direct some other questions to DeGregory. The Court declined to allow further questioning, ostensibly on the premise that once DeGregory had purged himself of contempt the Court's jurisdiction ceased and the Attorney General, in his capacity as a legislative fact-finding committee, should continue his probe for facts in the manner outlined by N.H. RSA Chapter 588:8-a (supp).

The foregoing is the plateau upon which the present proceedings are based. Because of the need for facts which could only be elicited from Appellant by extensive and detailed questioning concerning Communist Party activities

and membership in and affecting New Hampshire, present and past, further proceedings under the continuing investigatory authority of the delegated legislative committee were initiated on November 22, 1963. Appellant appeared and refused to answer certain questions propounded to him on the theory that the Attorney General had not laid a foundation upon which he could initiate his investigation and base his examination of Appellant. Whereupon the matter, as required by N.H. RSA Chapter 491:20, was transferred to the Superior Court. The Attorney General's foundation consisted of THE REPORT OF THE ATTORNEY GENERAL TO THE NEW HAMPSHIRE GENERAL COURT, January 5, 1955 [R. 14, Exhibit I] and the patently obvious nature of the Communist movement and its mode of operation. DeGregory then stated to the court he had no relationship or knowledge of the Communist activity in New Hampshire for the previous six and one-half years. [R. 15] Appellant was held in contempt of court for his failure to answer questions propounded to him by the Attorney General. The Court held that the Attorney General had laid the proper foundation to enable him to interrogate Appellant regarding the communist movement in and affecting New Hampshire.

A reserved case was filed and entered in the New Hampshire Supreme Court on October 22, 1964. The New Hampshire Supreme Court affirmed the decision of the Superior Court of May 27, 1964. *Attorney General v. DeGregory*, 106 N.H. 262, 209 A. 2d 712 (April 1965). This matter is now before the United States Supreme Court pursuant to Title 28, U.S. Code, § 1257 (2).

QUESTIONS PRESENTED

Did the application of RSA 588, with reference to Appellant's contempt citation in the instant case, violate

his constitutional rights of due process of law under the First, Fourth and Fourteenth Amendments to the United States Constitution? Otherwise stated: In light of the record has the State's interest been pressed, in this instance, to a point where it has come into fatal collision with the overriding constitutionally protected rights of Appellant?

- (a) Has the passage of time from the compilation of Exhibit 1 (Report of the Attorney General to the New Hampshire General Court, January 5, 1955) [R. 14] to the interrogation of DeGregory on November 22, 1963 been of such magnitude as to destroy the basis or foundation laid by the Attorney General in order to institute his investigation pursuant to N.H. RSA Chapter 588:8-a (Supp.) and to question DeGregory as to the subject matter of Communism? the basis of said foundation being said Exhibit 1 [R. 14] and the present patently obvious nature of the Communist movement and its mode of operation?
- (b) May a witness, merely by a general denial of subversive activity or of knowledge thereof, foreclose further pertinent inquiry into his activities, and control the form of the questions being propounded by the legislative fact finding committee?

The constitutionality of N. H. RSA 588 is not now in issue as it was not raised in the instant case; and, since its constitutionality has previously been upheld in *Wyman v. DeGregory*, 103 N.H. 214, 169, A. 2d, Aff'd, 368 U.S. 19, 7 L ed 2d 86, 82 S. Ct. 137 (1961).

SUMMARY OF ARGUMENT

The sole issue in the case at bar is the constitutionality of the application of N.H. RSA 588 with reference to Appellant and not the constitutionality of the statute. The New

Hampshire Supreme Court, long experienced in the field of legislative fact-finding actions, employed the appropriate legal tests. That is the New Hampshire Courts held "the legitimate and vital interests of the State has not been pressed in this instance to a point where it has come into fatal collision with the witnesses overriding constitutionally protected rights" *Attorney General v. DeGregory*, 106 N.H. 262, 209 A. 2d 712 (1965). The case is now before this Honorable Court on appeal to decide in effect whether there is any evidence in the record to support the position of the New Hampshire Courts.

The statute RSA 588 has been held constitutional. *DeGregory v. Attorney General*, 368 U.S. 19, 7 L. ed. 2d 86, 82 S. Ct. 137 (1961). Self-preservation is a legitimate function of government, and may be implemented in the manner prescribed in RSA 588. *Wyman v. Uphaus*, 360 U.S. 72, 3 L. ed. 2d 1090, 79 S. Ct. 1040 (1959); *Wyman v. DeGregory*, 103 N. H. 214, 169 A. 2d, 1 aff'd 368 U.S. 19, 7 L. ed. 2d 86, 82 S. Ct. 137 (1961). It is also clear that the New Hampshire Legislature wishes to be informed on all phases of the topic under investigation. N.H. Laws 1957, Chapter 347, p. 538.

In order for the Attorney General to initiate his investigations, certain circumstances must come into play in order for him to operate pursuant to N.H. RSA 588:8-a. The circumstances which trigger his investigation are "information which he deems reasonable or reliable relating to violations of the provisions of this chapter". . . . N. H. RSA 588:8-a.

The statute is not so narrow as to require specific violations of law to be shown prior to questioning a party as to his knowledge about them. The Attorney General is permitted to determine the presence of subversive people in the state and the extent of subversive activity generally in and affecting the state where his information relating to

violations of the provisions of RSA 588 is reasonable and reliable. *Wyman v. DeGregory*, 103 N.H. 214, 169 A 2d 1, aff'd 368 U.S. 19, 7 L. ed 2d 86, 82 S. Ct. 137 (1961). The Attorney General in the instant case was clothed with the following information:

(1) That the inherent nature of the Communist Party is today and has been such that it is a proper area for legislative investigation. Its aim is the eventual overthrow, by any means or at any cost, of our democratic form of government. The Communist Party's mode of operation is slow and methodical, by creating dissention and infiltrating key areas of our political, military, academic, and economic factions of society. Its membership and activity are kept secret with knowledge of such facts known by only a handful of members. Communism is the silent enemy which patiently waits to strike more like the proverbial "snake in the grass" than the "bull in the china shop". Note *Barenblatt v. U. S.* 360 U.S. 109, 128, 129, 3 L. ed. 2d 1115, 79 S. Ct. 1081 (1959); *Gibson v. Florida Legislative Committee* 372 U.S. 539, 547, 9 L. ed. 2d 929, 83 S. Ct. 889 (1963).

(2) Exhibit I, The Report of the Attorney General to the New Hampshire General Court, January 5, 1955 [R. 14] portrays Communist activity in and affecting the State of New Hampshire. District I, in Boston, Massachusetts, was the lead unit with respect to the New England area, with New Hampshire and its various cells and sub-cells being an integral part thereof. Major areas of concentration were World Fellowship, Inc., educational institutions, the P.T.A., and labor groups. There averaged fifty to one hundred hard core Communists in the state with many more sympathizers and "front organizations" in the foreground. The Party's mode of operation in the state was similar to that on a world basis as were their respective goals.

(3) The targets of Communist infiltration in New Hampshire are still present; military installations, educational institutions, labor unions, defense and aero-space industries. Also still present in the state are many of the hard core Communists and Communist sympathizers, including Hugo DeGregory the alleged leader of the Communist Party in New Hampshire.

The Attorney General, knowing the past and present aims and methods of operation of the Communist Party, and the past methods, aims, membership, and targets of the Communist Party in and affecting New Hampshire, coupled with the presence of these former members and sympathizers, including Appellant's presence in the State, it was reasonable for him to assume that subversives were present in the state and that there were violations of RSA 588. Thus the circumstances were present to "trigger" the Attorney General's legislative fact-finding investigation. The pre-emption of subversive investigation by the Federal Government as outlined in *Pennsylvania v. Nelson*, 350 U.S. 497, 100 L. ed. 640, 76 S. Ct. 477 (1956) does not apply to the present case as we are dealing with activity which directly affects the State of New Hampshire. *Uphaus v. Wyman*, 360 U.S. 72, 76, 3 L. ed 2d 1090, 79 S. Ct. 1040 (1959).

Once the fact-finding investigation has properly begun the Attorney General in order to call a specific witness must show a relationship or nexus between the subject under investigation and the witness. *Uphaus v. Wyman*, 360 U.S. 72, 78-80, 3 L. ed. 2d 1090, 79 S. Ct. 1040 (1959); *Gibson v. Florida Legislative Committee*, 372 U.S. 539, 9 L. ed. 2d 929, 83 S Ct. 889 (1963); *Barenblatt v. U.S.*, 360 U.S. 109, 3 L. ed. 2d 1115, 79 S. Ct. 1081 (1959). A reading of the pertinent cases indicates that the nexus or relationship need not be of present origin if the information sought to be illicit was relevant to the present investigation. *Gibson v. Florida Legislative Committee*, *Supra*,

Uphaus v. Wyman, Supra; Barenblatt v. U.S., Supra; Braden v. U.S., 365 U.S. 431, 5 L. ed. 2d 653, 81 S. Ct. 584 (1961). The Attorney General had information that DeGregory was previously the head of the Communist movement in New Hampshire [R. 14 - Exhibit I p.9]. He was also a paid functionary of the Communist Party, its secretary-treasurer, and an organizer [R. 22-25]. This was held a proper nexus upon which to question DeGregory, in that he had information of past activity which would be relevant to the present investigation. *Wyman v. DeGregory*, 103 N.H., 214, 169 A 2d 1, aff'd 368 U.S. 19, 7 L. ed. 2d 86, 82 S. Ct. 137 (1961). The use of the term "relevancy" as used in a legislative fact-finding investigation is broader than in the trial of a case; it encompasses inquiry, the answer to which would be reasonably concerned with the main issues under investigation. *Sinclair v. U.S.*, 279 U.S. 263, 299, 73 L. ed. 692, 49 S. Ct. 268 (1929). This bears out the recent concept that "History provides the illuminating context within which the implications of present conduct may be known". *Communist Party of the United States v. Subversive Activities Control Board*, 367 U.S. 1, 68 6 L. ed. 2d 625, 81 S. Ct. 1357 (1961). Certainly the information available to DeGregory as secretary-treasurer, and organizer and leader in New Hampshire, as to Party members and sympathizers, plans of attack and infiltration would be invaluable to the State of New Hampshire in order to protect itself from aggression. This is particularly so since the mode of attack and aims of the Communist Party have not changed appreciably over the past years, and in light of the limited knowledge of such activity and membership lists by the average party member. Thus there is sufficient cause for the New Hampshire Supreme Court to have found a sufficient nexus between the topic under investigation and the witness, DeGregory, to allow his questioning by the Attorney General, and to compel him to answer the same [R. 14-21].

The only other requirement imposed on the State prior to questioning a witness is that he be apprised of the subject under investigation and the connective reasoning whereby the precise questions relate to it; however, if indisputably clear they need not be stated for the record. *Barenblatt v. U.S.*, 360 U.S. 109, 124, 3 L. ed. 2d 1115, 79 S. Ct. 1081 (1959); *Watkins v. U.S.*, 354 U.S. 178, 214, 215, 1 L. ed. 2d 1273, 77 S. Ct. 1173 (1957). In the case at bar it was clear the witness was aware that the topic under investigation was subversive activity and subversives in and affecting the State of New Hampshire, and the specific questions related to his past activity in the communist movement; in fact his long experience with similar investigations would preclude him from raising such issue.

Thus the decision of the New Hampshire Supreme Court, *Attorney General v. DeGregory*, 106 N.H. 262 (1965), should be affirmed, since there is ample evidence in the record that the vital and legitimate interests of the state have not been pressed into fatal collision with the Appellant's constitutionally protected rights.

I. THE NEW HAMPSHIRE SUPREME COURT EMPLOYED THE PROPER LEGAL TESTS IN UPHOLDING THE CONSTITUTIONALITY OF THE ATTORNEY GENERAL'S ACTION AS A LEGISLATIVE INVESTIGATING COMMITTEE.

Where, as in the instant case, the issue is not the constitutionality of a specific statute, but is the constitutionality of the application of said statute, the first point of inquiry is, Did the courts employ the appropriate legal tests?

The New Hampshire Supreme Court has experienced more than a cursory involvement in the legal problems relating to legislative investigation of subversive activities. *Nelson v. Wyman*, 99 N.H. 33, 105 A. 2d. 756 (1954);

Kahn v. Wyman 100 N.H. 245, 123 A.2d. 166 (1956); *Wyman v. Uphaus*, 100 N.H. 436, 130 A.2d. 278 (1957); *Wyman v. Sweezy*, 100 N.H. 103, 121 A.2d. 783 (1956); *Wyman v. Uphaus*, 101 N.H. 139, 136 A.2d 221 (1957); *Wyman v. DeGregory*, 101 N.H. 171, 137 A.2d 512 (1957); *Wyman v. Uphaus*, 102 N.H. 461, 159 A.2d. 160 (1960); *Wyman v. DeGregory*, 103 N.H. 214, 169 A.2d. 1 (1961); *Attorney General v. DeGregory*, 106 N.H. 262, 209 A.2d 712 (1965).

The United States Supreme Court has on two separate occasions advised the New Hampshire Supreme Court as to the tests to be employed in evaluating the constitutionality of the Attorney General's action as a legislative investigating committee. *Sweezy v. Wyman*, 354 U.S. 234, 1 L.ed. 2d 1311, 77 S.Ct. 1203 (1957); *Uphaus v. Wyman*, 355 U.S. 16, 2. L. ed. 2d 22, 78 S.Ct. 57 (1957).

It is abundantly clear that the New Hampshire Supreme Court has previously employed the appropriate tests in determining the constitutionality of the Attorney General's action as a legislative investigating committee. *Uphaus v. Wyman*, 360 U.S. 72, 3 L.ed. 2d 1090, 79 S. Ct. 1040 (1959); *DeGregory v. Attorney General*, 368 U.S. 19, 7 L.ed. 2d 86, S.Ct. 137 (1961) [both decisions upheld state action]

There can be no doubt that in the present case the New Hampshire Supreme Court applied to the facts the appropriate legal tests as they have done in the past. The Court has examined the nature of the subject under inquiry, the relationship of Appellant thereto, the presence of both in and affecting the State of New Hampshire, the purpose for such investigation, and all other factors pertinent to said case. The Court thereupon weighed all the evidence, its final analysis being that the action of the Attorney General was constitutional.

Attorney General v. DeGregory, 106 N.H. 262, 266, 209 A.2d. 712, [Dec'd April 30, 1965]:

"This exercise by the state of its power adequately to inform itself in order to act and protect its legitimate and vital interests has not been 'pressed, in this instance, to a point where it has come into fatal collision with the overriding constitutionally protected rights' of the defendant. *Uphaus v. Wyman*, 360 U.S. 72, 81."

II. THE DETERMINATION OF THE NEW HAMPSHIRE GENERAL COURT AUTHORIZING A CONTINUOUS REVIEW OF SUBVERSIVE ACTIVITIES IN AND AFFECTING THE STATE OF NEW HAMPSHIRE BY THE ATTORNEY GENERAL ACTING AS A LEGISLATIVE INVESTIGATING COMMITTEE WAS A LEGITIMATE EXERCISE OF GOVERNMENTAL POWER.

Self-preservation is a basic function of government in our democratic form of society. *Wyman v. DeGregory*, 103 N.H. 214, 169 A. 2d 1, aff'd 368 U.S. 19, 7 L. ed. 2d 86, 82 S. Ct. 137 (1961); *Uphaus v. Wyman*, 360 U.S. 72, 80, 3 L. ed. 2d 1090, 79 S. Ct. 1040 (1959); *Dennis v. U.S.*, 341 U.S. 494, 501, 505-6, 95 L. ed. 1137, 71 S. Ct. 857 (1951); *Gitlow v. New York*, 268 U.S. 652, 668, 69 L. ed. 1138, 45 S. Ct. 625 (1925). The State of New Hampshire, as a matter of right, is empowered to defend itself from subversion pursuant to N.H. RSA 588 as amended. *Wyman v. DeGregory*, 103 N.H. 214, 169 A. 2d 1, aff'd 368 U.S. 19, 7 L. ed. 2d 86, 82 S. Ct. 137 (1961); *Wyman v. Uphaus*, 360 U.S. 72, 80, 3 L. ed. 2d 1090, 79 S. Ct. 1040 (1959). Communism is a definite and distinct threat to the security of the state and thus a legitimate area for legislative inquiry. *Nelson v. Wyman*, 99 N. H. 33, 50, 105 A. 2d 756 (1954); *Gibson v. Florida Legislative Investigation Committee*, 372 U.S. 539, 547, 9 L. ed. 2d 929, 83 S.Ct. 889 (1963). Fact-finding investigation by a state legislature of a legitimate sub-

ject (Communism) in furtherance of a necessary government function is proper and necessary to form a basis of knowledge and fact whereby the Legislature can serve its function of review, repeal, amendment and enactment of legislation. *Kilbourn v. Thompson*, 103 U.S. 168, 26 L. ed. 377, (1881); *McGrain v. Daugherty*, 273 U.S. 135, 153, 71 L. Ed. 580, 47 S. Ct. 319 (1927); *Sinclair v. U.S.*, 279 U.S. 263, 73 L. Ed. 692, 49 S. Ct. 268 (1929); *Jurney v. MacCracken*, 294 U.S. 125, 79 L. Ed. 802, 55 S. Ct. 375 (1935).

The question of whether or not to be informed as to the existence of subversion and communism as it affects the security of the State of New Hampshire is a matter of legislative and not judicial determination. *Wyman v. DeGregory*, 103 N.H. 214, 217, 169 A. 2d 1, aff'd, 368 U. S. 19, 7 L. Ed. 2d 86, 82 S. Ct. 137 (1961); *Wyman v. Uphaus*, 101 N.H. 139, 136 A. 2d 221 (1957), aff'd, 360 U.S. 72, 3 L. Ed. 2d 1090, 79 S. Ct. 1040 (1959). There can be no doubt that the legislature still wishes to be informed on these subjects.

Wyman v. Uphaus, 101 N.H. 139, 140, 136 A. 2d 221 (1957.)

"The legislative history [of New Hampshire Laws 1955, Chapter 197] makes it clear beyond a reasonable doubt that it did and does desire an answer to these questions."

The status of the Attorney General acting as a legislative investigating committee, with certain time limitations, was changed by the legislature to that of a continuously operative body. N.H. Laws 1957, Chapter 178, p. 213.

On Wednesday, July 10, 1957, the General Court of New Hampshire under suspension of the Rules adopted by more than a two-thirds vote (275-24 in the House; 16-6

in the Senate) a Resolution to the effect that the General Court authorized the questions put and wanted and continues to want the information which is sought.

N. H. Laws 1957, Chapter 347, p. 538:

"JOINT RESOLUTION RELATIVE TO INTERPRETATION OF LEGISLATIVE INTENT ON SUBVERSIVE ACTIVITIES.

Whereas, the attorney general has for several years been conducting a fact-finding investigation of subversive activities in New Hampshire for the general court pursuant to law, and

Whereas, by the laws of this state the attorney general for these purposes has been found by the Supreme Court of New Hampshire to be a constitutionally delegated legislative committee of this body, and

Whereas, in the course of the aforesaid investigation one Paul M. Sweezy refused to respond to questions of the attorney general which questions and report thereof was made by the attorney general to this legislature on January 5, 1955, and

Whereas, in decreeing the questions put to Sweezy were put without authority, the United States Supreme Court on June 17, 1957, stated that.

'The lack of any indication that the Legislature wanted the information the attorney general attempted to elicit from petitioner must be treated as the absence of authority.'

Now therefore be it

Resolved by the Senate and House of Representatives in General Court convened:

THAT this general court is, and for a long time has been, familiar with the questions put to Paul M. Sweezy by the attorney general acting in this state, authorized these questions, wanted and continues to want the information which is sought by these questions, and has enacted this resolution for the specific purpose of removing the doubt which has been expressed by the United States Supreme Court ' . . . neither we nor the State Courts have any assurance that the questions petitioner refused to answer fall into a category of matters upon which the Legislature wanted to be informed when it initiated this inquiry.' [Approved July 11, 1957.]"

Thereafter the legislature continually has evidenced a desire to be informed by the Attorney General of subversive activity in and affecting New Hampshire. N.H. Laws, 1961, Ch. 224:1, p. 33, Ch. 225:1, p. 402; N.H. Laws 1963, Ch. 198:1, p. 201, Ch. 199:1, p. 298; N.H. Laws 1965, Ch. 239, p. 300, Ch. 282 p. 470.

III. THE FOUNDATIONS PREREQUISITE TO THE INSTITUTION OF INVESTIGATION INTO SUBVERSIVE ACTIVITY AND THE INTERROGATION OF APPELLANT HAVE BEEN LAID BY THE ATTORNEY GENERAL WITH RESPECT TO THE SUBJECT MATTER UNDER INVESTIGATION AND APPELLANT'S RELATION THERETO.

The provisions of N.H. RSA 588:8-a (supp) require that in order to question Appellant the Attorney General must establish (1) that he has information which he deems reasonable or reliable relating to violations of the provisions

of RSA 588 and (2) that he has reasonable cause to believe that the Appellant has evidence pertinent to the subject under investigation.

With reference to point "(1)" above it is not necessary for the Attorney General to investigate only "violations" of RSA 588 but he is also permitted to determine whether subversive persons are located within the state. This interpretation was placed upon RSA 588:8-a (supp) by the New Hampshire Supreme Court in *Wyman v. DeGregory*, 103 N.H. 214, 216, 217, 169 A. 2d 1, aff'd 368 U.S. 19, 7 L. ed. 2d 86, 82 S. Ct. 137 (1961):

"It is the defendant's contention that the present statute no longer permits the Attorney General 'to determine whether subversive persons . . . are presently located within the state' since that language which appeared in the previous legislation (Laws 1953, c. 307 and Laws 1955, cc. 197 and 340) does not appear in these words in RSA 588:8-a (supp) as enacted in 1957. It is argued that the Attorney General is now confined to investigating only 'violations' of RSA ch. 588 and therefore there is no basis for investigating subversive persons or for the investigation of the defendant.

We think it is clear from the history of the legislation in this field in this state that that was not the intent of the Legislature and that it was not what the Legislature said. RSA 588:8-a (supp). This statute does not require that there must be a violation of law before the legislative investigation can be set in motion. It only requires that there be reasonable and reliable information 'relating' to violations of the provisions of RSA ch. 588. The statute specifically provides that the results of the investigation shall be reported to the

Legislature together with the Attorney General's 'recommendations, if any, for legislation.' This clearly indicates that the Legislature has demanded a report as to whether further legislation in the field of subversive activities is required. * * * Our decision in *Uphaus v. Wyman* 102 N.H. 517, 518, did not say that legislation was limited to investigations of violations of law."

Thus the Attorney General in order to trigger his investigation must have reasonable or reliable information as to any of the following: (a) violations of the provisions of RSA N.H. Chapt. 588; (b) the presence of said subversives and subversive sympathizers who have taken some active part as members or by participation in an alleged subversive organization.

Once the investigation has been triggered it is incumbent upon the Attorney General, in order to question a witness, to have reasonable cause to believe that a nexus or relationship exists between the subject under investigation and the witness upon which to base his inquiry. *Uphaus v. Wyman*, 360 U.S. 72, 78-80; 3 L. ed. 2d 1090, 79 S. Ct. 1040 (1959).

The Attorney General relied upon the inherent nature of the Communist movement and The Report Of The Attorney General to the New Hampshire General Court, January 5, 1955 [R. 14 Exhibit I] as the basis to question DeGregory. Substantially the same basis was deemed proper in a prior investigation in which DeGregory was a witness. *Wyman v. DeGregory*, 103 N.H. 214, 169 A 2d 1, aff'd 368 U.S. 19, 7 L. ed. 2d 86, 82 S. Ct. 137 (1961). The only change in circumstances from the prior DeGregory case and the present proceeding is the passage of time, about three years, and a blanket denial by DeGregory of knowledge of any pertinent facts relating to subversive

activities during the past six and one-half years. [R. 15.]. The latter point has been treated elsewhere in this brief. The Merrimack County Superior Court [R. 14] determined as a matter of fact that the Attorney General had reasonable and reliable information to permit him to proceed with the investigation and the questioning of Appellant. The fact that the Superior [Trial] Court did not abuse its discretion in this decision was upheld. *Attorney General v. DeGregory*, 106 N.H. 262, 209 A. 2d 712 (April 1965).

Attorney General v. DeGregory supra, p. 264:

"We hold that given the nature of the Communist movement and its mode of operation the above report could constitute information which the Attorney General could deem reasonable or reliable relating to violations of RSA ch. 588 and the proper basis for his present investigation of subversive activities on behalf of the Legislature".

Further discussion will show that the passage of time did not alter the fact that the Attorney General had laid the proper foundations to investigate subversion and to question Appellant, with particular reference to the following areas:

- [A.] The Communist Party.
- [B.] Appellant's relationship or nexus to the Communist Party.
- [C.] The Communist Party in and affecting the State of New Hampshire.

[A.] THE COMMUNIST PARTY.

The courts, in view of the goals and existence of world Communism, have consistently refused to view the Com-

munist Party as an ordinary political party. *Barenblatt v. U.S.*, 360 U.S. 109, 128, 3 L. Ed. 2d 1115, 79 S. Ct. 1081 (1959); *Gibson v. Florida Legislative Committee*, 372 U.S. 539, 547, 9 L. ed. 2d 929, 83 S. Ct. 889 (1963). The Communist movement has played a dominant role in world affairs since World War II. It has been of major concern to the Congress in all areas of legislation, especially with reference to Foreign Affairs, Military, Internal Security, Education and Budgetary.

Barenblatt v. U. S. supra at pp. 128, 129:

"To suggest that because the Communist Party may also sponsor peaceable political reforms the constitutional issues before us should now be judged as if that Party were just an ordinary political party from the standpoint of national security, is to ask this Court to blind itself to world affairs which have determined the whole course of our national policy since the close of World War II, affairs to which Judge Learned Hand gave vivid expression in his opinion in *United States v. Dennis* (CA 2 NY) 183 F. 2d 201, 213, and to the vast burdens which these conditions have entailed for the entire Nation."

It is no secret that the tenets of the Communist Party have been and are the overthrow by force, violence or by any other means our democratic form of government here in the United States and elsewhere in the world.

Barenblatt v. U.S., supra p. 128:

"Justification for its exercise in turn rests on the long and widely accepted view that the tenets of the Communist Party include the ultimate overthrow of the Government of the United States by force and violence, a view which has been given formal expression by Congress."

Also note Subversive Activities Control Act of 1950; Title I of the Internal Security Act of 1950, §2, 64 Stat 987-989; *Carlson v. Landon*, 342 U.S. 524, 535, Note 21, 96 L. Ed. 547, 557, 72 S. Ct. 525 (1952).

As late as 1963 the courts have reiterated the view that the Communist Party, due to its mode of operation, its present effect on our way of life, and its tenets is classified as a permissive area of investigation. *Gibson v. Florida Legislative Committee*, 372 U.S. 539, 547, 9 L. ed. 2d 929, 83 S. Ct. 889 (1963).

It was certainly reasonable for the Attorney General to conclude that the Communist movement has not abated, nor its tenets changed from the time of the first DeGregory hearing to the present one. A contrary conclusion would require the Attorney General to blind himself to prior case law and the course of history which is displayed in every newspaper, on every radio and television newscast, with reference to Communist activity and goals.

[B.] APPELANT'S RELATIONSHIP OR NEXUS TO THE COMMUNIST PARTY.

The Report of The Attorney General to the New Hampshire General Court, January 5, 1955, pp. 204-206 [R. 22-26] indicates that Appellant was a member of the Communist Party, an officer of the Party, and a paid functionary of the Party. Such data was held to be a valid nexus between the subject under investigation and DeGregory to compel his answer to a question propounded by the Attorney General. *Wyman v. DeGregory* 103 N.H. 214, 169 A. 2d 1, aff'd 368 U.S. 19, 7 L. Ed. 2d 86, 82 S. Ct. 137 (1961). The factor of the passage of time, and DeGregory's denial of any knowledge of pertinent facts which relate to this investigation, has been discussed elsewhere in this brief.

The concept of "nexus" has been brought up to date by the case of *Gibson v. Florida Legislative Committee*, 372 U.S. 539, 9 L. ed. 2d 929, 83 S. Ct. 889 (1963). Nexus is the relationship of the witness to the subject under investigation and the purpose for said investigation. The concept of nexus is developed by a case by case analysis. The Courts have balanced the interest of the state on one side and that of the witness' constitutional rights on the other. The Courts, as has been stated elsewhere in this brief, have given great weight to investigations of Communist activity for the purpose of protection of the state's security. In all such cases where the subject matter of the investigation is Communism or subversion the critical point in the Court's decision is the nexus of the witness to the subject matter. The greater the nexus and closer the relationship of the witness to the subject matter under investigation, in Communist investigation cases, the greater the possibility that the State's interests do not come into fatal conflict with the witness's constitutional rights. As the relationship or nexus diminished the more probable it was that the witness had his constitutional rights violated.

During an investigation of the Communists, the following was held to be a sufficient nexus whereby Appellant could be questioned: sworn testimony indicating he was a Communist; he was working as a propaganda expert for them; he checked into town as a member of a group known to be Communistic. *Wilkinson v. U.S.* 365 U.S. 399, 5 L. ed. 2d 633, 81 S. Ct. 1024 (1961).

Another set of facts relating to a Communist investigation provided a valid nexus for Appellant's questioning: sworn testimony pinpointed him as a Communist organizer; a prior conviction for sedition in Kentucky. *Braden v. U.S.* 365 U.S. 431, 5 L. ed. 2d 653, 81 S. Ct. 584 (1961).

The subject of Communist infiltration into the NAACP in Florida was the purpose of interrogating Mr. Gibson,

its President. There was no evidence that either he or a majority of the membership were communists. It would also appear that the release of such membership lists would do irreparable harm to the members and the organization which heretofore performed worthwhile activities in this Southern State. *Gibson v. Florida Legislative Committee*, 372 U.S. 539, 9 L. ed. 2d 929, 83 S. Ct. 889 (1963). For the aforesaid reasons the interests of the State were said to come into fatal collision with the constitutional rights of appellant.

During an investigation of the witness the following nexus was established with reference to the Communist Party: two prior witnesses under oath identified the witness as a Communist; that he had recruited them into the party; that he donated money to the party; in response to these statements the witness denied he was a Communist but admitted he was sympathetic to its activities and causes from 1942-47. The position of the witness was upheld not for lack of a sufficient nexus, but because the government had failed to advise the witness of the pertinency of the questioning when he raised that issue. *Watkins v. U.S.*, 354 U.S. 178, 1 L. ed. 2d 1273, 77 S. Ct. 1173 (1957).

During an investigation of the presence of subversive persons as defined in N.H. RSA Chapt. 588 Appellant was called as a witness. He was a member of the Progressive Party, an author and a lecturer at the University of New Hampshire, he denied he was a Communist; he referred to himself as a "self-styled Marxist". The contentions of the witness were upheld on the grounds that the legislative intent to be informed was indefinite as to information sought from the witness. Also of concern was the remoteness of the Progressive movement and the witness' connection thereto as they relate to the topic under investigation (subversion). The nexus problem though not the major concern of the court, absent the intent issue, would prob-

ably have been held insufficient when coupled with an investigation in the field of education and of an organization of doubtful communist affiliation. *Sweezy v. Wyman*, 354 U.S. 234, 1 L. ed. 2d 1311, 77 S. Ct. 1203 (1957).

During an investigation of Communism under N.H. RSA Chapt. 588, the Attorney General attempted to elicit from the witness who then was the executive director of World Fellowship the following information: (a) guest lists of such organizations; (b) who were its employees; (c) who were its speakers. There was found a valid nexus to investigate the witness in that there were invited nineteen known Communists to speak at the Fellowship meetings; he had visited Russia with and at the request of known Communists; and other information as presented in Report of the Attorney General to the New Hampshire General Court, January 5, 1955. [R. 14 Exhibit I pp. 162-175]; *Uphaus v. Wyman*, 360 U.S. 72, 3 L. ed. 2d 1090, 79 S. Ct. 1040 (1959).

Again during an investigation of Communism, the following was held to be a sufficient nexus whereby appellant could be questioned: statements under oath that the witness was an active member of a communist group while a graduate student at the University of Michigan (1947-50). *Barenblatt v. U.S.*, 360 U.S. 109, 3 L. ed. 2d 1115, 79 S. Ct. 2d 1081 (1957).

During the first investigation when DeGregory was summonsed as a witness the following facts were held as a proper nexus for his examination: he was a paid functionary of the Communist Party; an officer, its secretary-treasurer; he ran meetings in New Hampshire; all other facts as presented in Report of The Attorney General to the New Hampshire General Court, January 5, 1955 [R. 22-25]. *DeGregory v. Attorney General*, 368 U.S. 19, 7 L. ed. 2d 86, 82 S. Ct. 137 (1961).

The facts which form the nexus between the subject under investigation and DeGregory in the instant case are exactly the same as those in *Wyman v. DeGregory*, *supra* [R. 22-25]. As in the other cases discussed above the witness was under oath named as a Communist, he was active in the movement and had information vital to the investigation. The time at which his relation to the Communist movement was established with reference to the present investigation was not so far removed as to destroy the nexus between the witness and the subject under investigation. This point was developed in the cases previously discussed. As to the relevancy of the questions this point is covered elsewhere in the brief.

[C.] THE COMMUNIST PARTY IN AND AFFECTING THE STATE OF NEW HAMPSHIRE.

The Report of The Attorney General to the New Hampshire General Court, January 5, 1955 [R. 14] outlines with substantial accuracy the following areas with reference to the Communist Party in and affecting the State of New Hampshire:

- (a) The mode of operation of the Communist Party in general,
- (b) The mode of operation of the Communist Party in specific reference to the State of New Hampshire,
- (c) Communists and Communist sympathizers active in the New Hampshire area,
- (d) Spheres of Communist influence and infiltration in and affecting New Hampshire.

The organizational unit of the Communist Party operating in New Hampshire, Vermont, Maine, Rhode Island and Massachusetts was known as District I. The central

headquarters of District I was Boston, Massachusetts. [R. 14]. [Exhibit I p. 47] The former head of the so-called New Hampshire Division was Elba Chase Nelson, who was succeeded in office by the Appellant, Hugo DeGregory. [R. 14] [Exhibit I p. 9] The active hard core party membership in New Hampshire fluctuated from fifty to one-hundred, with many more being sympathetic to the cause. [R. 14] [Exhibit I p. 9]. Various sub-divisions or cells were active in the New Hampshire cities of Nashua, Concord, Claremont, Newport, Washington and Manchester. The sub-division or cell method was abolished and meetings were held in small groups of three to five members to avoid any one member having unlimited access to and knowledge of communist activity and membership [R. 14]. [Exhibit I p. 47]

The Communist sphere of influence has attempted to attract members and sympathizers from every walk of life. Various Communist front organizations are established wherein the party's work is carried on and its policies and ideas disseminated [See R. 14 - Exhibit I p. 23 for discussion as to Communist Front Organizations]. Aside from infiltration into crucial industrial and government positions, particular interest has been shown in the areas of religion, labor and education. It has long been the established Communist Party line to oppose religious action and thought at all times. However, this position has been delicately approached in order to cater to potential members and sympathizers who otherwise might balk at assisting the Party. Once the person has been won over to the Communism program the anti-religious program begins. Relentless pressure on religious activity in Communist countries throughout the world is an initial line of attack by the Communist Party. Priests and missionaries have been ejected from the country and imprisoned if they did not conform to the Communist doctrines. [Note R. 14 - Exhibit I pp 41-43] A cursory reading of the Report of the At-

torney General to the New Hampshire General Court, January 5, 1955 [R. 14] will indicate that the approach to religion in District I was somewhat similar to the one above. World Fellowship Inc., though not church affiliated, gave to the public an aura of religious affiliation, and was denied the backing of the New Hampshire State Council of Churches. Many religious leaders were present at the Conference, and participated in its program. Also of note is the information relative to Reverend Warren Henry McKenna [R. 14] [Exhibit I pp. 221-226].

Said Exhibit I [R. 14] [Exhibit I pp. 124-129] develops the approach used by the Communist Party with reference to labor unions and labor's activities. It is a key objective of the Communist Party to gain a foothold with trade unions and labor groups. Attempts were made to infiltrate various unions, and some headway was made in certain areas. The areas where headway was made were the Granite Cutters Union Granite Cutters International Association, A.F. of L, C.I.O., IWO, International Fur and Leather Workers Union, International Labor Defense, Finnish Workers Federation. [R. 14, Exhibit I p. 53]. In Vermont there was a Granite Workers strike which was exploited by the Communist Party. [R. 14, Exhibit I p. 51]. It should be noted that these probes have been rejected by the labor unions in New Hampshire; however, there is no evidence that Communist Party has dropped this mode of attack.

Another area of infiltration by the Communist Party is the field of education. The investigation of the Attorney General, Exhibit I [R. 14] [Exhibit I pp. 62-123] has shown that an attack or probe has been made in the field of education. Various professors, lecturers and speakers have been cultivated to spread the Communist line, political groups advocating the Communist position have been established on the campuses of U.N.H. and Dartmouth.

Another area of infiltration is the PTA [R. 14 - Exhibit I pp. 188-189] Even though there has been little known activity recently in this area there is no evidence to show that the educational community is no longer a sphere of Communist attack.

The Report of the Attorney General to the New Hampshire General Court, January 5, 1955 develops the concept of the so-called Communist Front Organization. [R. 14 Exhibit I pp. 23-28] The "front organization" is the chief vehicle for the dissemination of the Communist Party line; they also act as pressure groups to set up contacts in key areas of this country's social, political, educational and economic life. These organizations are the front line of attack for the Communist Party. The persons attending World Fellowship were in the main associated with various Communist "front" organizations [R. 14 Exhibit I pp. 130-175]; Professor Daggett of the University of New Hampshire had been associated with various "Front Organizations" [R. 14 Exhibit I pp. 66-68] as was Paul Sweezy, another lecturer at the University of New Hampshire. The Report of the Attorney General to the New Hampshire General Court, January 5, 1955 [R. p. 4 Exhibit I pp. 176-184] shows that the Progressive Party though not a communist front organization had strong Communist leanings and was a forum for the Communist line. A brief biographical sketch of various New Hampshire residents [R. 14, Exhibit I pp. 190-254] indicates affiliations with the Communist Party and Communist Front Organizations.

It is clear that the facts and the case law, *Barenblatt v. U.S.* 360 U.S. 109, 128, 3 L. ed. 2d 1115, 79 S. Ct. 1081 (1959); *Gibson v. Florida Legislative Committee* 372 U.S. 539, 547, 9 L. ed. 2d 929, 83 S. Ct. 889 (1963), indicate that the Communist Party is not an ordinary political party but is one subject to investigation due to its mode of opera-

tion and ultimate goal of the overthrow of our democratic form of government. The Communist Party is similar to an iceberg, with a great portion being below the surface. It takes great pains in concealing its membership. It places men in key positions to secure information and help carry out the Party's goals. Wherever there is unrest and dissension the Party is certain to be lurking in the shadows. It has been and still is the Communist approach to probe for weak spots in our economic, political, educational and social society and then infiltrate the area to test its strength and gather data for future action.

The targets of Communist aggression are still present today and capable of infiltration. On the military side there are Grenier Field and Pease Air Force Base, the home of Reserve and Regular SAC and Transport Units; the Portsmouth Navy Yard which is a vital cog in our Nuclear Sub-Marine Fleet, and the various army reserve units and installations throughout the state. The University of New Hampshire, Dartmouth, and many other colleges offer fertile grounds for Communist activity of a nature set out in the Report of the Attorney General to the New Hampshire General Court, January 5, 1955. [R. 14 - Exhibit I pp. 62-123] Other vital areas subject to Communist infiltration as evidenced from past and present activity are the PTA, the many active labor groups in New Hampshire, and its electronics industry long active in vital defense work. There are also presently residents of New Hampshire who were many of the individuals discussed in said Report [R. 14 Exhibit I pp. 190-254]. In fact the presence in the state of Appellant, the alleged leader of the Communist movement in New Hampshire [R. 14 Exhibit I p. 9] could give rise to the view that Communist activity still flourishes in New Hampshire.

It is certainly reasonable for the Attorney General, knowing the past goals and mode of operation of the Party as

it affects the world and the State of New Hampshire, the Party's activity in District I, and also knowing that these methods of operation and goals still exist, to infer that since the presence of the targets of Communist aggression now exists in New Hampshire and there are present in the state known Communists, former Communists, and Communist sympathizers that there were Communists and Communist activity in and affecting the security of the State of New Hampshire. It thus follows that the Attorney General had reasonable and reliable information as to violations of N.H. RSA chapt. 588 to trigger his legislative fact-finding investigations.

IV. THE CASES OF AMERICAN COMMITTEE FOR PROTECTION OF FOREIGN BORN V. SUBVERSIVE ACTIVITIES CONTROL BOARD, AND VETERANS OF THE ABRAHAM LINCOLN BRIGADE V. SUBVERSIVE ACTIVITIES CONTROL BOARD ARE NOT CONTROLLING.

Veterans of the Abraham Lincoln Brigade v. Subversive Activities Control Board, 380 U.S. 513, 14 L. ed. 2d 46, 85 S. Ct. 1153 (1965) and *American Committee for Protection of Foreign Born v. Subversive Activities Control Board*, 380 U.S. 503, 14 L. ed. 2d 39, 85 S. Ct. 1148 (1965) do not deal with legislative fact-finding investigations but relate solely to the field of registration. Neither of the aforementioned cases disputes the proposition espoused in *Gibson v. Florida Legislative Investigation Committee*, 372 U.S. 539, 547, 9 L. ed. 2d 929, 83 S. Ct. 2d 889 (1963); *Barenblatt v. U.S.*, 360 U.S. 109, 128, 3 L. Ed. 1115, 79 S. Ct. 1357 (1959) as to the basic nature of the Communist Party which renders it a proper and permissible subject of constant scrutiny by the Legislature. The above-captioned cases only hold that in order to require registration of or prosecute for the failure to so register

as a "Communist Front Organization" as defined under §7 of the Subversive Activities Control Act, 64 Stat. 987, 993, 50 U.S.C. §786 requires a showing of present Communist involvement.

The registration statute, *supra*, states that if any organization is at present a so-called "Communist Front Organization" that it must register or be subject to certain criminal sanctions. Thus even though previous activity would characterize the above appellants as "Communist Front Organizations", "History provides the illuminating context within which the implications of present conduct may be known" *Communist Party of the United States v. Subversive Activities Control Board*, 367 U.S. 1, 68, 6 L. Ed. 2d 625, 81 S. Ct. 1357 (1961), the lag between such activity and the present was so great (19 to 21 years) coupled with the lack of present involvement, the government was precluded from imposing criminal sanctions. In the legislative fact-finding investigation cases the requisite present involvement relates to the subject under investigation and not the witness' involvement therein. Thus once the initial foundation is laid a nexus between the witness and the subject matter through either his past or present involvement must be shown in order to allow his questioning. Here lies the type of proceeding which calls into play the legal maxim that "History provides the illuminating context within which the implications of present conduct may be known". *Communist Party of the U.S. v. Subversive Activities Control Board*, *supra*.

A witness' failure to answer questions at a legislative fact-finding investigation, where the proper subject and the nexus foundations have been laid, will subject him to the civil sanction of contempt and not to any criminal sanctions. The distinction in the line of cases cited is that where criminal sanctions are imposed a present involvement of the accused is necessary; while where civil sanc-

tions are imposed the subject matter of inquiry must have present involvement yet the witness' relation to same may be of past connection. Thus the staleness claimed by Appellant is neither present nor applicable to the type of case at bar.

V. THE QUESTIONS PROPOUNDED TO APPELLANT BY THE ATTORNEY GENERAL WERE RELEVANT WITH REFERENCE TO THE SUBJECT UNDER INVESTIGATION NOTWITHSTANDING THE BLANKET DENIAL OF APPELLANT OF ANY KNOWLEDGE OF POSSIBLE PERTINENT FACTS RELATING TO THE PAST SIX AND ONE-HALF YEARS.

Once all of the foundations have been laid to properly place the witness before the legislative fact-finding committee, the scope of inquiry is limited only by the requirement of relevancy. *Barenblatt v. U.S.*, 360 U.S. 109, 3 L. ed. 2d 1115, 79 S. Ct. 1081 (1959); *U.S. v. Rumely*, 345 U.S. 41, 97 L. Ed. 770, 73 S.Ct. 543 (1953); *McGrain v. Dougherty*, 273 U.S. 135, 71 L. Ed. 580 (1927); In *Re Chapman*, 166 U.S. 661, 41 L.Ed. 1154 (1897); *U.S. v. Orman*, 207 F. 2d 148 (3d cir. 1953); *U.S. v. Josephson*, 165 F. 2d 82 (2d cir. 1947); see 33 B.U. Law Review 337 (1953) Liacos, "Rights of Witnesses Before Congressional Committees". The term "relevant" as here used has broader application than in the trial of a case and encompasses inquiry, the answer to which would be reasonably concerned with the main object of the investigation. *Sinclair v. U.S.*, 279 U.S. 263, 299, 73 L. Ed. 692, 49 S. Ct. 268 (1928); *U.S. v. Ormand*, 207 F. 2d 148, 153 (3d cir. 1953).

During the course of the May 20, 1964 hearing at the Merrimack County Superior Court Appellant refused to answer the following questions:

"Have you ever been a member of the Communist Party?" [R. 14]

"When did you join the Communist Party?" [R. 17]

"Were you a paid member of the Communist Party?" [R. 17]

"Were you an Officer of the Communist Party?" [R. 17.]

"Did you ever have access to or control of membership or financial records of the Communist Party in New Hampshire?" [R. 17]

"Did you attend Communist Party meetings in New Hampshire?" [R. 18]

"To what extent did Communist Party District I in Boston, Massachusetts, have control over the Party's activities in New Hampshire?" [R. 18]

"Did you ever attend any Communist Party meetings in New Hampshire wherein any person advocated to overthrow the—overthrow, destroy or alter the Government of the State of New Hampshire, by force or violence?" [R. 19]

"Did you ever attend any Communist Party meetings in New Hampshire where any person advocated, abetted, advised or taught by any means the commission of an act to constitute a clear and present danger to the security of this state?" [R. 19-20]

"At any such meeting did one or more persons conspire to commit any such act?" [R. 20]

"Did you or any person known to you destroy any books, records or files, or secrete any funds in this state belonging to or owned by the Communist Party?" [R. 21]

"Did you at any time participate or assist in the formation of or contribute to the support of the Communist Party in New Hampshire?" [R. 21]

There can be no dispute that these questions are relevant to the topic under investigation. The purpose for such investigation is the self-preservation and defense of the State against subversion. It is obvious that to establish and implement such defense through future legislation, it will be necessary that the Legislature have available the following facts:

1. Known subversives and subversive sympathizers who have been active in and affecting the State.
2. The organizations infiltrated and the subject of infiltration by the subversive element.
3. The extent of subversive activity in and affecting the state.
4. The general mode of operation of subversive activity, past present and future, in and affecting the State.
5. The specific mode of operation of the subversive operation in the past, present, and future in and affecting the State.
6. The officers of the units of the various subversive cells.
7. The whereabouts of the organization's records.

Appellant contends that his blanket denial of any relevant facts which pertain to the previous six and one-half years [R. 15,] would preclude further questioning of him with reference to such time period. Research has failed to uncover any law which would enable a witness by such action to cut off further questioning. It is axiomatic that

the choice of question is for the inquirer and the issue of relevancy is for the court, neither one is for the witness to determine.

An obvious starting point for the Attorney General's investigation is to determine what subversive activities, what organizations, and what subversives and subversive sympathizers have been active in and affecting the State. Such inquiry is permissive as a knowledge of the past is necessary to lay the cornerstone for future study. *Nelson v. Wyman*, 99 N.H. 33, 39, 105 A. 2d 756 (1954); *Uphaus v. Wyman*, 360 U.S. 72, 78, 3 L. ed. 2d 1090, 79 S. Ct. 1040 (1959).

Appellant would draw the line of relevancy at six and one-half years in the past, the date of the enactment of N.H. RSA 588:8-a. The theory that the statute's enactment date precludes inquiry as to facts which had their genesis prior to said date is not the state of the law. *Nelson v. Wyman*, 99 N.H. 33, 39, 105 A. 2d 756 (1954); *Wyman v. DeGregory*, 103 N.H. 214, 169 A. 2d 1, aff'd 368 U.S. 19, 7 L. ed. 2d. 86, 82 S. Ct. 137 (1961).

That such questions are relevant has best been summed up by the following:

Communist Party of the United States v. Subversive Activities Control Board, 367 U.S. 1, 69, 6 L.ed. 2d 625, 81 S. Ct. 1357 (1961).

"Where the current character of an organization and the nature of its connection with others is at issue, of course past conduct is pertinent. Institutions, like other organisms, are predominately what their past has made them. History provides the illuminating context within which the implications of present conduct may be known."

VI. THE APPELLANT'S CONSTITUTIONAL RIGHTS WERE NOT VIOLATED WITH REFERENCE TO THE ATTORNEY GENERAL'S DUTY TO LAY A FOUNDATION WITH RESPECT TO APPRISING APPELLANT OF THE TOPIC UNDER INQUIRY AND THE CONNECTIVE REASONING WHEREBY THE PRECISE QUESTIONS RELATE TO IT.

It is "Black Letter Law" that the Appellant should be apprised of the topic under inquiry and the connective reasoning whereby the precise questions relate to it; however, the matter if indisputably clear need not be stated for the record. *Barenblatt v. U.S.*, 360 U.S. 109, 124, 3 L.ed. 2d 1115, 79 S.Ct. 1081 (1959); *Watkins v. U.S.*, 354 U.S. 178 214, 215, 1 L.ed. 2d 1273, 77 S. Ct. 1173 (1957).

Nowhere in the record does Appellant claim he is unaware of the topic under investigation or the reason for his interrogation. In fact at the May 20, 1964 hearing at the Merrimack Superior Court [R. 7-12] Appellant's counsel has reviewed the history of the investigation with reference to DeGregory. There he clearly demonstrated an awareness of the topic under investigation and the connective reasoning whereby the questioning relates to it. The doubt, if any, which may have existed as to the topic under investigation or the purpose of his interrogation was cleared up by Mr. Gall's statements at the Merrimack County Superior Court Hearing, on May 20, 1964 [R. 12-14] There he once again explained that the subject under investigation was Communism in and affecting the State of New Hampshire and that by virtue of DeGregory's prior relationship to the Communist Party as a member, officer, and paid functionary as outlined in Report of the Attorney General To The New Hampshire General Court, January 5, 1955, pp. 204-206 [R. 22-26,] DeGregory's knowledge of the Communist movement would be vital to the investigation. It would be totally unrealistic for Appellant to

dispute the issue that the Attorney General had laid the aforementioned foundation and that he was unaware of the subject matter of the investigation or the purpose of his interrogation in view of his long controversy with the Attorney General, which has been to both the New Hampshire and United States Supreme Courts on numerous occasions, and in view of the record of the instant case.

CONCLUSION

The state has shown a legitimate and vital need to investigate subversion in and affecting New Hampshire. It has also established a right to question Appellant by virtue of his prior Communist activity. In short, the vital and legitimate interests of the State have not been pushed into fatal collision with the Appellant's constitutionally protected rights.

Thus for the several reasons stated. Appellee respectfully requests the decision of the New Hampshire Supreme Court, *Attorney General v. DeGregory*, 106 N.H. 262 (1965), be affirmed.

Respectfully submitted,

THE STATE OF NEW HAMPSHIRE

By: William Maynard, Attorney General
R. Peter Shapiro, Assistant Attorney General
Joseph F. Gall, Special Assistant

January 14, 1966

Appendix A

UNITED STATES CONSTITUTION.

Amendment 1.

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

Amendment 4.

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Amendment 14, Section 1.

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Appendix B

NEW HAMPSHIRE REVISED STATUTES ANNOTATED.

CHAPTER 491.

Section 19. PETITION. Whenever any official or board is given the power to summon witnesses and take testimony, but has not the power to punish for contempt, and any witness refuses to obey such summons either as to his appearance or as to the production of things specified in the summons, or refuses to testify or to answer any questions, a petition for an order to compel him to testify or his compliance with the summons may be filed in the Superior Court or with some justice thereof.

Section 20. PROCEDURE. Upon such petition the Court or justice shall have authority to proceed in the matter as though the original proceeding had been in the court and may make orders and impose penalties accordingly.

Appendix C

CHAPTER 588.

SUBVERSIVE ACTIVITIES.

588:1 DEFINITIONS. For the purpose of this chapter "organization" means an organization, corporation, company, partnership, association, trust, foundation, fund, club, society, committee, political party, or any group of persons, whether or not incorporated, permanently or temporarily associated together for joint action or advancement of views on any subject or subjects.

"Subversive organization" means any organization which engages in or advocates, abets, advises, or teaches, or a purpose of which is to engage in or advocate, abet, advise, or teach activities intended to overthrow, destroy or alter, or to assist in the overthrow, destruction or alteration of, the constitutional form of government of the United States, or of the state of New Hampshire, or of any political subdivision of either of them, by force, or violence.

"Foreign subversive organization" means any organization directed, dominated or controlled directly or indirectly by a foreign government which engages in or advocates, abets, advises, or teaches, or a purpose of which is to engage in or to advocate, abet, advise, or teach, activities intended to overthrow, destroy, or alter, or to assist in the overthrow, destruction or alteration of the constitutional form of government of, the United States, or of the state of New Hampshire, or of any political subdivision of either of them, and to establish in place thereof any form of government the direction and control of which is to be vested in, or exercised by or under, the domination or control of any foreign government, organization, or individual; but does not and shall not be construed to mean an organization the *bona fide* purpose of which is to promote world peace by

alliances of unions with other governments or world federations, unions or governments to be effected through constitutional means.

"Foreign government" means the government of any country or nation other than the government of the United States of America or one of the states thereof.

"Subversive person" means any person who commits, attempts to commit, or aids in the commission, or advocates, abets, advises or teaches, by any means any person to commit, attempt to commit or aid in the commission of any act intended to overthrow, destroy or alter, or to assist in the overthrow, destruction or alteration of, the constitutional form of the government of the United States, or of the state of New Hampshire, or any political subdivision of either of them, by force, or violence, or who is a member of a subversive organization or a foreign subversive organization.

SEDITION.

588:2 FELONIES. It shall be a felony for any person knowingly and wilfully to

(a) commit, attempt to commit, or aid in the commission of any act intended to overthrow, destroy, or alter, or to assist in the overthrow, destruction or alteration of the constitutional form of the government of the United States, or of the state of New Hampshire, or any political subdivision of either of them, by force or violence; or

(b) advocate, abet, advise or teach by any means any person to commit, attempt to commit, or assist in the commission of any such act under such circumstances as to constitute a clear and present danger to the security of the United States, or of the state of New Hampshire or of any political subdivision of either of them; or

(c) conspire with one or more persons to commit any such act; or

(d) assist in the formation or participate in the management or to contribute to the support of any subversive organization or foreign subversive organization knowing said organization to be a subversive organization or a foreign subversive organization; or

(e) destroy any books, records or files, or secrete any funds in this state of a subversive organization or a foreign subversive organization, knowing said organization to be such.

Any person who shall be convicted by a court of competent jurisdiction of violating any of the provisions of this section shall be fined not more than twenty thousand dollars, or imprisoned for not more than twenty years, or both, at the discretion of the court.

588:3 PENALTY. It shall be a felony for any person after August 1, 1951 to become, or after November 1, 1951 to remain a member of a subversive organization or a foreign subversive organization knowing said organization to be a subversive organization or foreign subversive organization. Any person who shall be convicted by a court of competent jurisdiction of violating this section shall be fined not more than five thousand dollars, or imprisoned for not more than five years, or both, at the discretion of the court.

588:3-a EVIDENCE OF MEMBERSHIP OR PARTICIPATION. In determining membership or participation in a subversive organization or a foreign subversive organization as defined in this chapter, or knowledge of the purpose or objective of such organization, the jury, under instructions from the court, may consider evidence, if presented, as to whether the accused person to his knowledge:

- (1) Has been listed as a member in any book or any of the lists, records, correspondence, or any other document of the organization;
- (2) Has made financial contribution to the organization in dues, assessments, loans, or in any other form;
- (3) Has made himself subject to the discipline of the organization in any form whatsoever;
- (4) Has executed orders, plans, or directives of any kind of the organization;
- (5) Has acted as an agent, courier, messenger, correspondent, organizer, or in any other capacity in behalf of the organization;
- (6) Has conferred with officers or other members of the organization in behalf of any plan or enterprise of the organization;
- (7) Has been accepted as an officer or member of the organization or as one to be called upon for services by other officers or members of the organization;
- (8) Has written, spoken or in any other way communicated by signal, semaphore, sign or in any other form of communication orders, directives, or plan of the organization;
- (9) Has prepared documents, pamphlets, leaflets, books or any other type of publication in behalf of the objectives and purposes of the organization;
- (10) Has mailed, shipped, circulated, distributed, delivered, or in any other way sent or delivered to others materials or propaganda of any kind in behalf of the organization;
- (11) Has advised, counseled or in any other way imparted information, suggestions, recommendations to officers or members of the organization or to anyone else in behalf of the objectives of the organization;

- (12) Has indicated by word, action, conduct, writing or in any other way a willingness to carry out in any manner and to any degree the plans, designs, objectives, or purposes of the organization;
- (13) Has in any other way participated in the activities, planning, actions, objectives, or purposes of the organization;
- (14) The enumeration of the above subjects of evidence on membership or participation in a subversive organization or a foreign subversive organization as above defined, shall not limit the inquiry into and consideration of any other subject of evidence on membership and participation as herein stated.

588:3-b CONSTRUCTION OF PROVISION. Nothing in the preceding section shall be construed to limit the supervisory power of the court over the admission and exclusion of evidence or over the sufficiency of the evidence as a whole.

588:4 BARRED FROM OFFICE. Any person who shall be convicted by a court of competent jurisdiction of violating any of the provisions of sections 2 and 3 of this chapter, in addition to all other penalties therein provided, shall from the date of such conviction be barred from:

(a) holding any office, elective or appointive, or any other position of profit or trust in or employment by the government of the state of New Hampshire or of any agency thereof or of any county, municipal corporation or other political subdivision of said state;

(b) filing or standing for election to any public office in the state of New Hampshire.

588:5 DISSOLUTION OF ORGANIZATIONS. It shall be unlawful for any subversive organization or foreign subversive organization to exist or function in the state of New Hampshire and any organization which by a court of com-

petent jurisdiction is found to have violated the provisions of this section shall be dissolved, and if it be a corporation organized and existing under the laws of the state of New Hampshire, a finding by a court of competent jurisdiction that it has violated the provisions of this section shall constitute legal cause for forfeiture of its charter and its charter shall be forfeited, and all funds, books, records and files of every kind and all other property of any organization found to have violated the provisions of this section shall be seized by and for the state of New Hampshire, the funds to be deposited in the state treasury and the books, records, files and other property to be turned over to the attorney general of New Hampshire.

588:6 ASSISTANCE FURNISHED. For the collection of any evidence and information referred to in this chapter, the attorney general is hereby directed to call upon the superintendent of the state police, and county and municipal police authorities of the state to furnish him such assistance as may from time to time be required. Such police authorities are directed to furnish information and assistance as may be from time to time so requested. The attorney general may testify before any grand jury as to matters referred to in this chapter as to which he may have information.

588:7 RECORD. The attorney general shall maintain complete records of all information received by him and all matters handled by him under the requirements of this chapter. Such records as may reflect on the loyalty of any resident of this state shall not be made public nor divulged to any person except with the permission of the attorney general to effectuate the purposes thereof.

588:8 GRAND JURY INQUIRIES. The superior court, when in its discretion it appears appropriate, or when informed by the attorney general that there is information or evidence of the character described in section 2 of this chapter

to be considered by the grand jury, shall charge the grand jury to inquire into violations of this chapter for the purpose of proper action.

588:8-a ATTORNEY GENERAL. At any time when the attorney general has information which he deems reasonable or reliable relating to violations of the provisions of this chapter he shall make full and complete investigation thereof and shall report to the general court the results of this investigation, together with his recommendations, if any, for legislation. In any investigation hereunder the attorney general or any duly authorized member of his staff is authorized to require by subpoena or otherwise the attendance of such witnesses and the production of such correspondence, books, papers and documents and to administer such oaths, and to take such testimony and to make such expenditures within the funds provided as he deems advisable. The provisions of section 7 of this chapter shall be inapplicable to the investigation provided for herein and the attorney general is hereby authorized to make public such information received by him, testimony given before him, and matters handled by him as he deems fit to effectuate the purposes hereof.

LOYALTY

588:9 EMPLOYMENT. No subversive person, as defined in this chapter, shall be eligible for employment in, or appointment to any office, or any position of trust or profit in the government of, or in the administration of the business of this state, or of any county, municipality, or other political subdivision, of this state.

588:10 WRITTEN STATEMENTS REQUIRED. Every person and every board, commission, council, department, court or other agency of the state of New Hampshire, or any political subdivision thereof, who or which appoints or employs or supervises in any manner the appointment or employ-

ment of public officials or employees shall establish by rules regulations or otherwise, procedures designed to ascertain before any person, including teachers, and other employees of any public educational institution in this state, is appointed or employed, that he or she as the case may be, is not a subversive person, and that there are no reasonable grounds to believe such persons are subversive persons. In the event such reasonable grounds exist, he or she as the case may be, shall not be appointed or employed. In securing any facts necessary to ascertain the information herein required, the applicant shall be required to sign a written statement containing answers to such inquiries as may be material, which statement shall contain notice that it is subject to the penalties of perjury.

588:11 EXCEPTIONS. The inquiries prescribed in section 10 other than the written statement to be executed by an applicant for employment, shall not be required as a prerequisite to the employment of any persons in the classification of laborers in any case in which the employing authority shall in his or its discretion determine and by rule or regulation specify the reasons why, the nature of the work to be performed is such that employment of persons as to whom there may be reasonable grounds to believe that they are subversive persons as defined in this chapter will not be dangerous to the health of the citizens or the security of the government of the United States, the state of New Hampshire or any political subdivision thereof.

588:12 PRESENT EMPLOYEES. Every person, who on August 1, 1951 shall be in the employ of the state of New Hampshire or of any political subdivision thereof, other than those now holding elective office shall be required on or before October 1, 1951 to make a written statement which shall contain notice that it is subject to the penalties of perjury, that he or she is not a subversive person as defined in this chapter, namely, any person who commits, at-

tempts to commit, or aids in the commission, or advocates, abets, advises or teaches by any means any person to commit, attempt to commit, or aid in the commission of any act intended to overthrow, destroy or alter, or to assist in the overthrow, destruction or alteration of, the constitutional form of the government of the United States, or of the state of New Hampshire, or any political subdivision of either of them, by force, or violence; or who is a member of a subversive organization or a foreign subversive organization, as more fully defined in this chapter. Such statement shall be prepared and execution required by every person and every board, commission, council, department, court, or other agency of the State of New Hampshire or any political subdivision thereof responsible for the supervision of employees under its jurisdiction. Any such person failing or refusing to execute such a statement or who admits he is a subversive person as defined in this chapter shall immediately be discharged.

588:13 DISCHARGE OF PERSONNEL; HEARING. Reasonable grounds on all the evidence to believe that any person is a subversive person, as defined in this chapter shall be cause for discharge from any appointive office or other position of profit or trust in the government of or in the administration of the business of this state, or of any county, municipality or other political subdivision of this state, or any agency thereof. The personnel commission shall, by appropriate rules or regulations, prescribe that persons charged with being subversive persons, as defined in this chapter, shall be accorded notice and opportunity to be heard, in accordance with the procedures prescribed by law for discharges for other reasons. Every person and every board, commission, council, department, or other agency of the state of New Hampshire or any political subdivision thereof having responsibility for the appointment, employment or supervision of public employees not cov-

ered by the state classified service shall establish rules or procedures similar to those required herein for classified services for a hearing for any person charged with being a subversive person, as defined in this chapter after notice and opportunity to be heard. Every employing authority discharging any person pursuant to any provision of this chapter shall promptly report to the attorney general the fact of and the circumstances surrounding such discharge. A person discharged under the provisions of this section shall have the right within thirty days thereafter to appeal to the superior court of the county where such person may reside for a determination by such court (with the aid of a jury if the appellant so elects) as to whether or not the discharge appealed from was justified under the provisions of this act. The court shall speedily hear and determine such appeals, and from the judgment of the court, there shall be a further appeal to the supreme court of New Hampshire as in civil cases.

588:14 DECLARATION OF CANDIDATES. No person shall become a candidate for election to, nor qualify for, any public office under the election laws of this state unless he or she shall file with the declaration of candidacy, or prior to qualifying, an affidavit that he or she is not a subversive person as defined in this chapter. No declaration of candidacy shall be received for filing by any town or city clerk or by the secretary of state unless accompanied by the affidavit aforesaid and there shall not be entered upon any ballot or voting machine at any election the name of the person who has failed or refused to make the affidavits aforesaid.

588:15 FALSE STATEMENTS. Every written statement made pursuant to this chapter by an applicant for appointment or employment, or by any employee shall be deemed to have been made under oath if it contains a declaration preceding the signature of the maker to the effect that it

is made under the penalties of perjury. Any person who makes a material misstatement of fact (a) in any such written statement, or (b) in any affidavit made pursuant to the provisions of this chapter, or (c) under oath in any hearing conducted by any agency of the state, or of any of its political subdivisions, pursuant to this chapter, or (d) in any written statement by an applicant for appointment or employment or by an employee in any state aid institution of learning in this state, intended to determine whether or not such applicant or employee is a subversive person as defined in this chapter, which statement contains notice that it is subject to the penalties of perjury shall be subject to the penalties of perjury prescribed in chapter 587, RSA.

588:16 TITLE. This chapter may be cited as the "Subversive Activities Act of 1951."

Appendix D

Merrimack,
No. 4890.

LOUIS C. WYMAN, *Attorney General*

v.

HUGO DEGREGORY

Argued December 6, 1960

Decided March 20, 1961.

1. Laws 1957, c. 178, s. 2 directing the Attorney General whenever he has information which he deems reasonable or reliable relating to violations of the provisions of the subversive activities act (RSA ch. 588) to make full and complete investigation thereof and report the results to the General Court with his recommendations for legislation does not require that there must be a violation of the Act before the legislative investigation can be conducted.
2. The fact that previous legislation (Laws 1953, c. 307, and Laws 1955, cc. 197, 340) authorizing the Attorney General to conduct investigation of subversive activities contained the words "to determine whether subversive persons . . . are presently located within the state" and the subsequent enactment (Laws 1957, c. 178, s. 2) did not contain that language does not restrict the powers of the Attorney General under the latter statute to investigations of only violations of the subversive activities act (RSA ch. 588).
3. Where the Attorney General has reasonable and reliable information relating to violations of the subversive activities act (RSA ch. 588) he is authorized by Laws 1957, c. 178, s. 2 to ask the witness, previously granted immunity in accordance with Laws 1959, c. 279, the question whether he is presently a member of the Communist Party, and upon the witness' refusal to answer when so

directed by the Superior Court he may be confined for civil contempt under the provisions of RSA 491:19, 20.

4. Such inquiry is pertinent and is not violative of the First Amendment to the Constitution of the United States; nor does such investigation violate the separation of powers provision of the State Constitution (Pt. I, Art. 37th).

PETITION, by the Attorney General under RSA 491:19, 20 for an order to compel compliance by the defendant with a subpoena served upon him on February 2, 1960 in a legislative investigation of subversive activities conducted by the Attorney General pursuant to Laws 1957, c. 178, s. 2, effective June 14, 1957, which now appears as RSA 588:8-a (supp).

The defendant, both at the investigation conducted by the Attorney General and at the hearing conducted by the Superior Court on June 28, 1960, was requested to answer the question: "Are you presently a member of the Communist Party?" The defendant had previously on February 8, 1960 been granted immunity pursuant to Laws 1959, c. 279. In the present proceeding the defendant has not claimed the privilege against self-incrimination in refusing to answer this question. Upon the defendant's continued refusal to answer the question he was adjudged in contempt by the Superior Court and ordered committed. The Trial Court refused to admit the defendant to bail and this issue was argued before this court on July 14, 1960, and the defendant was ordered released on bail on July 19, 1960, pending the present appeal. *Wyman v. DeGregory*, 102 N. H. 564.

The defendant's exceptions to the Court's order of commitment were reserved and transferred by *Morris, J.*

Louis C. Wyman, Attorney General (by brief and orally), *pro se.*

James C. Cleveland and Howard S. Whiteside (of Massachusetts) (*Mr. Whiteside orally*), for the defendant.

PER CURIAM. The resolution of the questions in this appeal has been held in abeyance following the oral argument awaiting receipt of certain opinions pending in the Supreme Court of the United States. Two of such opinions recently decided on February 27, 1961 are No. 37 *Wilkinson v. United States* and No. 54 *Braden v. United States*.

The defendant's committal for civil contempt for failure to answer the question "Are you presently a member of the Communist Party?" originates under the provisions of RSA 588:8-a (supp) (Laws 1957, c. 178, s. 2). The pertinent part of that statute reads as follows: "588-8-a. ATTORNEY GENERAL. At any time when the attorney general has *information which he deems reasonable or reliable relating to violations of the provisions of this chapter* he shall make full and complete investigation thereof and shall report to the general court the results of this investigation, together with his recommendations, if any, for legislation. In any investigation hereunder the attorney general or any duly authorized member of his staff is authorized to require by subpoena or otherwise the attendance of such witnesses and the production of such correspondence, books, papers and documents and to administer such oaths, and to take such testimony and to make such expenditures within the funds provided as he deems advisable. . . ." (Emphasis supplied).

It is the defendant's contention that the present statute no longer permits the Attorney General "to determine whether subversive persons . . . are presently located within this state" since that language which appeared in the previous legislation (Laws 1953, c. 307 and Laws 1955, cc. 197 and 340) does not appear in these words in RSA 588:8-a (supp) as enacted in 1957. [It is argued that the Attorney General is now confined to investigating only "vio-

lations" of RSA ch. 588 and therefore there is no basis for investigating subversive persons or for the investigation of the defendant.

We think it is clear from the history of the legislation in this field in this state that that was not the intent of the Legislature and that it was not what the Legislature said. RSA 588:8-a (supp). This statute does not require that there must be a violation of law before the legislative investigation can be set in motion. It only requires that there be reasonable and reliable information "relating" to violations of the provisions of RSA ch. 588. The statute specifically provides that the results of the investigation shall be reported to the Legislature together with the Attorney General's "recommendations, if any, for legislation." This clearly indicates that the Legislature has demanded a report as to whether further legislation in the field of subversive activities is required.]

The definitions of a "subversive person" and a "subversive organization" in RSA 588:1 as supplemented by specific tests for determining what constitutes participation in a subversive organization by RSA 588:3-a (supp). Laws 1955, c. 181, indicate no purpose to discontinue the legislative investigation. *Wyman v. Uphaus*, 102 N. H. 461, 463. While it is true that the emphasis has been changed from an investigation of the location of subversive persons to those who have taken some active part as members or by participation in an alleged subversive organization (RSA 588:3-a (supp)), the purpose to continue the investigation is not in doubt. *Wyman v. Uphaus*, 102 N. H. 461, 463. See Sixth Report of N. H. Judicial Council, 48, 47 (1956) and particularly recommendation 5. Our decision in *Uphaus v. Wyman*, 102 N. H. 517, 518, did not say that legislation was limited to investigations of violations of law.

[There are those who think that such a legislative investigation may be pointless, dangerous and ineffective (particularly on a state basis) and there are others who think it

desirable and necessary. But the wisdom or lack of wisdom in authorising and financing such an investigation still remains a matter for legislative rather than judicial determination.] *Uphaus v. Wyman*, 81 S. Ct. 153 (1960); No. 54 *Braden v. United States*, and No. 37 *Wilkinson v. United States*, both decided February 27, 1961.

The evidence and the exhibits convinced the Trial Court, as they do this court, that the Attorney General had reasonable and reliable information relating to violations of RSA ch. 588, which provided a valid and relevant basis for the investigation of the defendant. The question that he was asked "Are you presently a member of the Communist Party?" is a pertinent one (*Barenblatt v. United States*, 360 U. S. 109, 125); there is no doubt that the defendant and his counsel understood it and that, in spite of divided opinions, it does not violate First Amendment rights. No. 54 *Braden v. United States*, No. 37 *Wilkinson v. United States*, *supra*.

The contention that such investigation violates the separation of powers of our Constitution (Const. Ft. I, Art. 37th) has already been decided adversely to the defendant in *Wyman v. Uphaus*, 102 N. H. 461. See *Nelson v. Wyman*, 99 N. H. 33. The proposition that the Superior Court had no authority under RSA 491:19, 20 to find the defendant in civil contempt because the legislative committee is not an "official or board" within the meaning of that statute is without merit. *State v. Matthews*, 37 N. H. 450, 453. See *Wyman v. Uphaus*, 102 N. H. 461.

Under the majority opinions of the Supreme Court of the United States and under the decisions of this court we can find no constitutional infirmity in the order of civil contempt issued by the Trial Court.

Exceptions overruled.

WHEELER, J., did not sit; DUNCAN, J., dissented.

DUNCAN, J. *dissenting*: The proceedings now before the court are distinct from those considered in *Wyman v. DeGregory*, 100 N. H. 163 and 101 N. H. 171, having been instituted under a more recent statute. Laws 1957 c. 178, s. 2. See *Wyman v. DeGregory*, 102 N. H. 564. Ostensibly the 1957 statute was enacted to provide the Attorney General with some semblance of permanent authority, in place of the temporary investigatory powers conferred upon him as a legislative committee by earlier acts and resolutions. Laws 1953, c. 307; Laws 1955, cc. 197, 340. The bald fact is that in revising the statute the Legislature struck out the earlier direction "to determine whether subversive persons . . . are presently located within this state" (Laws 1953, c. 307, *supra*) upon which the validity of the prior investigation depended under the decision. See *Nelson v. Wyman*, 99 N. H. 33, 38, 39; *Wyman v. Sweezy* 100 N. H. 103, 110, 113; *Wyman v. Uphaus*, 100 N. H. 436, 441, 450; *Sweezy v. New Hampshire*, 354 U. S. 234, 236, 246; *Uphaus v. Wyman*, 360 U. S. 72; *Uphaus v. Wyman*, 81 S. Ct. 153, 154, 158 (1960).

The Attorney General is now charged solely with the duty of making investigation of "violations" of the provisions of the subversive activities act (Laws 1957, c. 178, s. 2, *supra*) a function which the same act likewise specifically entrusted to grand juries. Laws 1957, c. 178, s. 1. See RSA 588:2, 8-a (supp). I cannot avoid the conclusion that this change has substantially altered the whole character of the investigation in a way which renders the present investigation vulnerable under provisions of the Constitutions of New Hampshire and of the United States, more especially since the 1955 Report on Subversive Activities by the Attorney General to the General Court (*pp.* 9, 61, 204) makes it plain that he regards this defendant as a probable violator of the law. In view of the interpretation placed upon the 1957 act by the majority of the court, an exposition of my views with respect to the constitutional issues would be superfluous.

Appendix E

No. 237, Misc. HUGO DEGREGORY, Appellant, v. ATTORNEY GENERAL OF NEW HAMPSHIRE.

368 US 19, 7 L ed 2d 86, 82 S Ct. 137.

Appeal from the Supreme Court of New Hampshire.

October 23, 1961. Per Curiam: The judgment is affirmed.

The Chief Justice, Mr. Justice Black, Mr. Justice Douglas and Mr. Justice Brennan dissent.

Same case below, 103 NH 214, 169 A2d 1.

Howard S. Whitside for appellant.

Gardner C. Turner, Attorney General of New Hampshire, pro se.

Appendix F

OPINION OF SUPREME COURT OF NEW HAMPSHIRE.

Merrimack,
No. 5298.

WILLIAM MAYNARD, ATTORNEY GENERAL

v.

HUGO DEGREGORY

Argued January 5, 1965.

Decided April 30, 1965.

Petition under RSA 491:19, 20 to compel the defendant to answer certain questions asked him in a legislative investigation of subversive activities by the Attorney General pursuant to the provisions of RSA 588:8-a (supp).

When directed by the Trial Court (*Loughlin, J.*) to answer the propounded questions, defendant refused. He informed the Court he was not invoking his privilege against self incrimination. The Court adjudged him in contempt and ordered him committed to jail for a period of one year or until he purged himself of contempt. However, he was released on his own recognizance pending this appeal.

William Maynard, Attorney General, *R. Peter Shapiro*, Assistant Attorney General, and *Joseph F. Gall*, Special Assistant to the Attorney General (*Messrs. Shapiro and Gall* orally) for the Attorney General.

Lawrence J. Walsh and *Howard S. Whiteside* (of Massachusetts) (*Mr. Whiteside* orally) for the defendant.

LAMPRON, J. The first issue raised by the defendant is whether under the circumstances of this case the Attorney

General has power under RSA 588:8-a (supp) to question him and whether the Superior Court has power to commit him for his refusal to answer the questions asked.

RSA 588:8-c (supp) reads in part as follows: "At any time when the Attorney General has information which he deems reasonable or reliable relating to violations of the provisions of this chapter he shall make full and complete investigation thereof and shall report to the General Court the results of this investigation together with his recommendations, if any, for legislation."

We held in *Wyman v. DeGregory*, 103 N.H. 214, 216, 217, that this "statute does not require that there must be a violation of law before the legislative investigation can be set in motion. It only requires that there be reasonable and reliable information 'relating' to violations of the provisions of RSA Ch. 588" relating to subversive activities. This judgment was affirmed by the United States Supreme Court. *De Gregory v. Attorney General of New Hampshire*, 368 U.S. 19. That Court, as recently as March, 1963, reaffirmed the broad inherent power of a Legislature to conduct investigations "concerning the administration of existing laws as well as proposed or possibly needed statutes." *Gibson v. Florida Legislative Investigation Com.*, 372 U.S. 539, 545. See Annot. 3 L. Ed. 2d 1647, 1650.

The defendant argues, however, that the Attorney General did not comply with RSA 588:8-a (supp) in that he failed to show (1) that he "has information which he deems reasonable or reliable relating to violations of the provisions of" RSA ch. 588, and (2) that he has reasonable cause to believe that the defendant has evidence pertinent to the subject under investigation.

It has long been recognized that the tenets of the Communist Party include the overthrow of government by force and violence. *Nelson v. Wyman*, 99 N.H. 33, 50; *Barenblatt*

v. *United States*, 360 U.S. 109, 128. That the State of New Hampshire has an interest in the preservation of its government against the menace of Communist subversion is firmly established. *Nelson v. Wyman*, *supra*; *Gibson v. Florida Legislative Investigation Com.*, 372 U.S. 539, 547. Furthermore our Legislature has manifested a continuing concern to be kept informed by its investigating committee, the Attorney General, as to the need of "further legislation in the field of subversive activities." *Wyman v. De Gregory*, 103 N.H. 214, 217; RSA 588:8-a (supp); Laws 1961, 224:1 (p. 311) and 225:1 (p. 402); Laws 1963, 198:1 (p. 201) and 199:1 (p. 298).

In the present proceeding instituted in 1963 the Attorney General introduced in evidence a report to the Legislature, made by a prior Attorney General, showing the existence of a Communist Party and Communist influence in New Hampshire and the probable continuance of such activities in our state. Report of the Attorney General to New Hampshire General Court (January 5, 1955). In prior proceedings beginning in February 1960, the Attorney General attempted to obtain information from the defendant, which he is still seeking in the present proceedings. We hold that given the nature of the Communist movement and its mode of operation the above report could constitute information which the Attorney General could deem reasonable or reliable relating to violations of RSA ch. 588 and the proper basis for his present investigation of subversive activities on behalf of the Legislature. *Wyman v. De Gregory*, 103 N.H. 214, 217; *De Gregory v. Attorney General of New Hampshire*, 368 U.S. 19; *Gibson v. Florida Legislative Investigation Com.*, 372 U.S. 539, 547.

It was also stated in the above report that the then Attorney General had reliable information concerning defendant's participation in the Communist Party as an officer, a presiding officer at conferences in New Hampshire,

and in numerous other party activities. (pp. 204-206). When questioned by the Attorney General on November 22, 1963, and also in the Superior Court in the hearing which is the basis of this appeal, the defendant made the following statement: "I am not now a member of the Communist Party and have not been at any time since the authority you have cited, RSA 588:8-a; that I have no knowledge of any Communist activities in New Hampshire during this period or of any violations of RSA 588 during this period of six and one-half years." Even if taken at its face value, this statement does not render otherwise proper and pertinent information regarding his prior contacts and involvements with the Communist Party and its members in this State beyond the legitimate interest and jurisdiction of the Attorney General acting as the investigating committee of the Legislature. *Nelson v. Wyman*, 99 N.H. 33, 39; *Uphaus v. Wyman*, 360 U.S. 72, 78.

We hold, as we did in *Wyman v. De Gregory*, 103 N.H. 214, 217, that the Attorney General had reasonable and reliable information relating to violations of RSA ch. 588 which provided a valid and relevant basis for the investigation of the defendant. We hold further that the Superior Court could properly hold the defendant in contempt under RSA 491:19, 20 for his refusal to answer whether he was ever a member, a paid member, or an officer of the Communist Party; if he ever had access to or control of membership or financial records of the Party in New Hampshire or attended Party meetings; the extent of control of the Party activities in this state exerted by a Party unit in Boston of which he is alleged to have been an officer; if he attended Party meetings in New Hampshire where advocacy of the overthrow of the Government took place or persons conspired to so do; also questions as to his knowledge about the books, records or files of the Party in this state and about his contributions to its support. *Uphaus v. Wy-*

man, 360 U.S. 72; *Barenblatt v. United States*, 360 U.S. 109; *Wilkinson v. United States*, 365 U.S. 399; *Braden v. United States*, 365 U.S. 431.

Defendant's last contention is that if RSA 588:8-a (supp) is held to empower the Attorney General in the circumstances of this case, to require defendant to answer questions, this statute is in contravention of the Fourteenth Amendment. This is for the reason, in the words of his brief, "that the danger to the State, which must be present to warrant action under a statute like c. 588, s. 8A has not been shown to exist at any time during plaintiff's current attempts to question defendant or in fact for years prior thereto."

As we have stated previously in this opinion the investigation of Communist Party activities in this state is within the power of our Legislature and the authority granted to its investigating committee, the Attorney General. Because of the nature of the Communist Party it is a proper and permissible subject of constant scrutiny by the Legislature. *Gibson v. Florida Legislative Investigation Com.*, 372 U.S. 539, 547. A defendant's own past or present membership in the Party is within the purview of such an investigation. *Id.* The nexus between the defendant and subversive activities disclosed by the report offered in evidence by the Attorney General and properly admitted by the Court, furnished adequate justification for his present interrogation of the defendant. The decisions in No. 44 *American Committee for Protection of Foreign Born v Subversive Activities Control Board* [380 U.S. 503], 33 L. W. 4336, and No. 65 *Veterans of Abraham Lincoln Brigade v. Subversive Activities Control Board* [380 U.S. 513], 33 L. W. 4339 (decided April 26, 1965) are not apposite to the situation existing in this case. This exercise by the State of its power adequately to inform itself in order to act and protect its legitimate and vital interests has not been "pressed, in this instance, to a

point where it has come into fatal collision with the overriding constitutionally protected rights" of the defendant. *Uphaus v. Wyman*, 360 U.S. 72, 81.

Exceptions overruled

DUNCAN, J., concurred in the result; the others concurred.

DUNCAN, J., *concurring*: The 1957 statute, under which this proceeding was instituted in 1963, directs the Attorney General to make an investigation of "violations" of the "Subversive Activities Act of 1951." or of "information . . . relating to" such violations. RSA 588:8-a (supp). Section 8-a and my views concerning it have not changed since it was under consideration four years ago in a prior proceeding against this defendant. See *Wyman v. DeGregory*, 103 N.H. 214, 218-219. The foundation for the most recent order that the defendant answer questions propounded by the Attorney General is once again the report made by Attorney General Wyman to the Legislature in 1955. However, I am bound to accept as decided law the interpretation placed upon § 8-a, *supra*, by a majority of this court in *Wyman v. DeGregory*; *supra*, since affirmed by *DeGregory v. Attorney General of New Hampshire*, 368 U.S. 19, and therefore concur in the order entered today.

Appendix G

COMMUNIST ACTIVITIES
IN NEW HAMPSHIRE

STATISTICS

Of those whose testimony was taken, sixteen refused to state whether or not they were or ever had been Communist Party members, claiming their constitutional privilege against self-incrimination. Of that sixteen, thirteen were identified as Communist Party members by other witnesses. In this particular investigation, we know that *at least* eighty-one per cent of those invoking the privilege against self-incrimination actually had been Communist Party members at some time.

This investigation has identified one hundred thirty-one New Hampshire residents as members of the Communist Party at one time or another. This number includes a handful of persons who participated in Communist Party activities to such an extent that although their Communist Party membership itself could not be proven, their participation was indistinguishable from that of persons whose membership could be proven. This number covers a period of time from 1928 to 1954, and it is recognized that there are many who we have not identified. Time limitations, not the exhaustion of logical leads, terminated the investigation.

The investigation disclosed that the turnover of membership in the Communist Party of New Hampshire was relatively high. The alleged leader of the Communist Party in New Hampshire, Mrs. Elba Chase Nelson, is reported to have stated in the late 1930's that there were never more than fifty Communist Party members at any one time in this state. For the press in 1947 she stated that there were a few over one hundred members in the state.

It is an accepted fact that the Party invariably overestimates its strength when speaking for publication but it is also recognized that the period 1944 through 1947 was the peak of Communist Party membership in this country. The Communist were able to muster between two hundred and three hundred votes in the various elections in which their candidates were on the ballot in New Hampshire. The figures on Communist Party membership in New Hampshire as released by Hon. J. Edgar Hoover, Director of the Federal Bureau of Investigation, prior to the passage of the Subversive Activities Act of 1951, placed the Party membership at approximately fifty in New Hampshire. This investigation has established identities of about forty-five who were Communist Party members at approximately that time, although in many cases the exact date of departure from New Hampshire or of separation from the Communist Party is in doubt. Of those, eight have cooperated, eighteen are now beyond the jurisdiction of New Hampshire, fifteen have refused to answer as to possible present membership, and the status of a handful is in doubt due to expiration of the investigation or as to dates of their departure from New Hampshire.

Many of the above number have died and others have left the state, and a considerable number have left the Communist Party. A few former Communist Party members have returned to their native homes in Finland and the Soviet Union.

Sworn testimony was taken from one hundred thirty witnesses. Some of these appeared by invitation, most were subpoenaed. Many other persons were interviewed but not placed under oath. Testimony was taken in many other states. Information was received from individuals and cooperating state and national agencies, coast to coast and border to border. Representatives of this office went outside the state several times in the course of the in-

quiry, seeking data pertinent to the investigation. Former Communists who held offices of both national and international scope assisted in amassing a considerable volume of information.

Three residents of the state denied ever being Communist Party members but refused to testify as to their knowledge of Communist Party activities of others and in so doing asserted their privilege against self-incrimination. These were: Mrs. Irma C. Otto, Center Sandwich, and Mrs. Beatrice Dobrowolski and Felix Dobrowolski of Nashua.

Several additional witnesses claimed their constitutional privilege in refusing to answer questions relative to their possible Progressive Party affiliations. Thirty-two former members of the Communist Party in New Hampshire cooperated with the investigation, providing valuable assistance to vastly varying degrees. Some of these now reside in other states.

Three former confidential informants of the Federal Bureau of Investigation concerning subversive activities in New England assisted us in our work. Several former members of the Young Communist League, and individuals having temporary close association with the Communist Party although never having been Communist Party members, also helped round out the picture.

Appendix H

ORGANIZATIONAL STRUCTURE
OF THE COMMUNIST PARTY IN NEW HAMPSHIRE

Geographically, the Communist Party U.S.A., is divided into subdivisions known as districts. There are thirty of these districts in the country. Communist Party District 1 includes the states of Maine, New Hampshire, Vermont, Massachusetts and Rhode Island. District headquarters is 2 Park Square, Boston, Massachusetts, but information has been received that although the district headquarters was once a beehive of activity, since the passage of the Massachusetts law regarding subversive activities in 1951, little or no activity takes place at headquarters. It is reported that the comrades now seldom go near the office, which remains vacant.

Within the districts there are further subdivisions of the Communist Party. The Communist Party of New Hampshire has frequently been referred to as the New Hampshire section. Within New Hampshire there have been various units of the Communist Party, and through the years they have been known variously as branches, units, cells and clubs. Due to the dispersed nature of the Communist Party in New Hampshire, the Party has not been organized into the more effective "shop units," composed of Communist Party members who work in one factory or industry. Rather, it has been organized entirely on the "street unit" plan, i.e., by geographical units.

This investigation has established that Communist Party units have existed in many towns in the state at various times, the more prominent being Nashua, Concord, Claremont, Newport, Washington, and Manchester. Most Communist Party members in New Hampshire have been assigned to one of the various units but some have been members at large, being assigned to no particular unit and

paying their dues to the state Secretary of the Communist Party.

Testimony of former Communists all over the country has established that in the 1949-1951 period the Communist Party in this country dispersed its membership, did away with large units, and established a pattern of meeting in small groups of from three to five members, so that no one Communist Party member could inform to the government on a large number of other Communist Party members.

In some instances the units in New Hampshire of the Communist Party have been sufficiently well organized to have unit officers, but in other cases all necessary business appears to have been transacted through the state officers of the Party.

The state officers in New Hampshire have reportedly consisted primarily of a state Chairman and state Secretary, with one person holding both positions a good share of the time.

The district officers of the Communist Party have jurisdiction over the New Hampshire Party and through the years have done much of the guiding of the efforts of the local Communists, according to the testimony of witnesses.

Appendix I

BRIEF HISTORY OF COMMUNIST PARTY
IN NEW HAMPSHIRE

Although the Communist Party was founded in the United States in 1919, there appears to have been no formal organization in New Hampshire until 1928 and at that time the Party operated under the name "Workers Party," which presumably was the "Workers (Communist) Party of America," which was the title which the Communists were using in this country at that time.

In May 1944 the Communist Party nationally was "dissolved" and the Communist Political Association, replaced it. This maneuver was Earl Browder's method of emulating Joseph Stalin, who ostensibly dissolved the Communist International in May 1943. The Communist Political Association nationally, under Browder, was a broad organization without the strict discipline of the Communist Party and the class struggle doctrine was soft-pedalled. For a time it looked as though the comrades thought they could "co-exist" with the democracies and republics.

The Party in New Hampshire followed suit. In July 1944 the Communist Party of New Hampshire was dissolved and the New Hampshire Chapter of the Communist Political Association was instituted at a state convention reportedly held in Windsor, New Hampshire.

In April 1945 Jacques Duclos, the French Communist leader who had just returned from the Soviet Union, wrote his now famous article entitled, "On the Dissolution of the Communist Party of the United States," for a French publication. This article was understood by Communists everywhere to have behind it the authority of the Kremlin. This article excoriated Browder for his deviation from the true Marxist-Leninist position and rocked the American Communists.

Within a brief period of time, with much wailing and Communist self-criticism, American Communist Political Association officials were confessing their error and hailing Duclos' call for a return to the principles of Marxism-Leninism, which in words of simplicity meant the return to the Communist principles of class warfare and the world-wide struggle for power. Browder was ostensibly expelled from the Communist Party in 1946.

In New England the cry was taken up and on July 21, 1945, in the Charter Room, New England Mutual Life Insurance Building, Berkeley Street, Boston, Massachusetts, a convention was held at which it was "voted" to reconstitute the Communist Party U.S.A., according to two former confidential informants of the Federal Bureau of Investigation who attended. The basic plan in New England, as elsewhere, was to return to the revolutionary doctrine of Marxism-Leninism.

The New Hampshire section of the Communist Party was represented at this convention by Mrs. Elba Chase Nelson, according to Herbert A. Philbrick and William H. Teto, who attended the convention as delegates of the Communist Party and confidential informants of the F.B.I. Mrs. Nelson reportedly spoke from the platform at this convention with the other New England Communist Party leaders.

It was not surprising to those who have kept tabs on the Communist Party throughout the years when the Communist Party of New Hampshire dittoed the national leaders of the Communist Party in March 1949, proclaiming to the world their support of the Soviet Union in the event of any war between the United States and the Soviets. The release made by the Communist Party of New Hampshire stated that in the event of an "unjust, aggressive and imperialistic war," brought on by "Wall Street," the Communist Party of New Hampshire would cooperate

with all democratic forces to defeat the predatory war aims of American imperialism. As any student of Communism knows, the Communist Party considers that anyone who dares to oppose Soviet aggression is engaged in an unjust, imperialistic, aggressive war. In this instance the Communist Party of New Hampshire was not only echoing the statement of the Communist Party national leaders but also those of leaders of the Communist Parties around the world who at that time were publicly swearing their allegiance to the Soviet Union and internationally displaying their perfidy.

Appendix J

DISCERNIBLE HIGHLIGHTS OF THE COMMUNIST
PARTY IN NEW HAMPSHIRE

The Communist Party entered candidates on the ballot in New Hampshire in most of the general elections between 1928 and 1946.

According to sworn testimony, the Communist Party of New Hampshire was aggressive in organizing support for the marble strike in Vermont in the mid-1930's. This activity apparently occupied the attention of the Communist Party for an extended period of time. The Communist Party rallied considerable support from non-Communist elements and according to one of the Communist Party officials who participated in the affair encouraged the workers to hold out long after the strike had proven hopeless and was only heaping additional hardships upon the strikers and their families.

There should be no confusion in the minds of the General Court concerning the marble strike, Inasmuch as the activity took place in Vermont this investigation did not concern itself with the factors out of which the strike grew but only with the Communist influence in the strike as it affected New Hampshire. In all probability, although this was not a subject of inquiry, the origin of the marble strike did not involve Communist influence. However, as in the case of many large strikes in the 1930's the Communists attempted to take over after the strike was in progress and turn it to their own ends. From the testimony of several Communists in New Hampshire, this would seem to have been the situation with regard to the marble strike.

American Communists have been instructed by such recognized Communist theoreticians as M. J. Olgin and

by international Communist authorities in the Lenin School in Moscow that if they are ever to seize the reins of state they must turn periods of civil unrest to their ends.

Communist leaders are instructed to turn periods of unrest into periods of chaos with the hope that when civil authority breaks down, the disciplined and dedicated Communist Party can assert itself in its "historic mission" and appropriate the reins of government.

To further these revolutionary aims, the Communist Party does not hesitate to remove its mask of pretended concern for the unfortunate and expose its true visage of cynicism and hypocrisy to "organize" or "train" the destitute so that they will be ready for the ultimate showdown. The Communist Party has shown itself in times of economic stress willing to subordinate the needs of legitimate strikers to the objectives of the revolutionary Party encouraging the strikers to demand positions impossible of attainment, for the purpose of precipitating civil crisis.

After the Vermont strike was hopelessly lost, according to the above-mentioned Communist Party official who participated, Fred Chase and Elba Chase Nelson, and other policy makers in the New Hampshire Party, actively supported its continuation. This was standard Communist procedure and makes obvious the real objectives of the New Hampshire Communists.

The Communists in New Hampshire performed some agitational work among the unemployed in the 1930's. Communists in this state were instrumental in organizing the New Hampshire phase of the Hunger March to Washington, D. C. in 1932. The Communists were active in some degree in the Workers Alliance in the Manchester area.

According to both Communists and non-Communists who participated in the affairs of the Farmer-Labor Party in this state in 1936, there was a strong Communist faction

in the Farmer-Labor Party at that time. It is noted that although the Communist Party and the Farmer-Labor Party both ran candidates for public office in 1936, there was no contest between these two parties for any office, since they ran candidates for varied and non-competitive offices.

After World War II there was again Communist agitation among the unemployed and an abortive attempt was made to set up an Unemployed Council in Nashua.

The New Hampshire Communists had no trouble swallowing imperialistic Soviet Russia's armed invasion of tiny Finland as shown by Mrs. Elba Chase Nelson's then defense of this act of imperialistic expansion.

Nor did the New Hampshire Communist Party strangle on the monumental dose of cynicism and opportunism administered by Comrade Stalin's alliance with Fascist Adolph Hitler. After years of bitter denunciation of Fascism and Naziism, in August 1939, after Hitler had begun his conquests that were to initiate a 1,000 year dynasty, Stalin secured Hitler's signature on a non-aggression pact between the two dictatorships, thus freeing Hitler of his biggest deterrent to aggression and allowing his military juggernaut to concentrate on the free countries of Europe.

Although the Communist Party of New Hampshire survived the very considerable blow of the signing of the Stalin-Hitler pact, it did not come through unscathed. Some of its more idealistic members became disillusioned with the Party and began their ideological break which before long led to an organizational break with the Communist Party.

From 1947 on, seemingly the number one project of the Communists in New Hampshire was the Third Party movement, the Wallace-for-President Committee. Progress-

sive Citizens of America, and the Progressive Party. This investigation has revealed more Communist effort along these lines than along any other lines since 1947.

In 1949 and 1951 the Communist Party of New Hampshire bitterly opposed legislation which was proposed to outlaw activity aimed at overthrowing the government by force and violence and to prohibit the teaching of this type of doctrine in New Hampshire schools.

Some of the organizations which have been heavily infiltrated by Communists in New Hampshire, according to the testimony of former Communists, but which no longer have units operating in this state, include the International Labor Defense, which had an active unit in Concord and support elsewhere, the Finnish Workers Federation in the Newport area, The American League against War and Fascism, and the American League for Peace and Democracy, which had units at Hanover and Manchester.

Communist influence in youth activities is dealt with in the section of this report concerning Dartmouth College and the University of New Hampshire, but there were other youth activities as well. A unit of the Young Communist League existed in New Ipswich in the 1930's, and if a unit did not exist in Manchester, at least there were a number of Young Communist League members whose residence was in Manchester and environs. There were other members of the League in various towns of the state in the late 1930's and the early 1940's.

Evidence has established that former members of the Communist Party of New Hampshire have attended Communist Party District 1 training schools in Boston and the Massachusetts Commission's Report of 1938 reported that Hugo DeGregory, who is now residing in Hudson, New Hampshire, and refused in July 1954 to say whether

or not he was then a Communist Party member, had attended the Communist Party National Training School.

The National Training School has reportedly been the key training ground for revolution and tactics for the Communist Party U.S.A. for years.

Testimony was received that the Communist Party in New Hampshire at various times through the years issued Communist Party membership books (sometimes referred to as cards) and at other times did not issue membership books for reasons of security. It appears that at about the time of the initial arrest of the national leaders of the Communist Party in 1949, the issuance of Communist Party membership books was discontinued, both in New Hampshire and in the United States generally. Communist Party members at the University of New Hampshire reportedly ceased carrying membership books for security reasons prior to that time.

Testimony has revealed that New Hampshire has been represented in both district and national conventions of the Communist Party, which are the ultimate authority in the Communist Party structure in this country, and both district and national officials of the Party have frequented this state on Party business.

Indicative of the type of influence from higher echelons and the instruction and discipline under which the New Hampshire Communists have operated, is the character of the Communist Party District leaders who have actively participated in the New Hampshire program.

Testimony has revealed that in the mid-1930's, Philip Frankfeld, then reportedly Communist Party District I Organizer, and his number one subordinate, George Blake Charney, alias George Blake, both frequented the state and provided guidance for the New Hampshire Commu-

nist Party. Both these men have been convicted in Federal Court of conspiring to advocate and teach the overthrowing of the United States government by force and violence.

In the late 1930's, Daniel Boone Schirmer was reportedly New England Organizer of the Young Communist League and as such was frequently in contact with the New Hampshire Young Communist League state leaders, dealing with them severely if the New Hampshire Young Communist League strayed. Schirmer later became Communist Party legislative agent for the State of Massachusetts, and in the spring of 1954 the Boston press reported he had been indicted by the Suffolk County, Massachusetts Grand Jury on a conspiracy charge but had disappeared and could not be located by Massachusetts authorities. He was also in New Hampshire as a district official of the Communist Party in the 1947-1948 period, according to sworn testimony, setting the line for the New Hampshire Party.

In the early 1930's Anne Burlak, now Mrs. Anne Burlak Timpson, attempted to perform organizational work for both the Communist Party and a textile union in New Hampshire, according to testimony of witnesses. She was subsequently reported to have attended Communist Party meetings in New Hampshire. Mrs. Timpson has held innumerable Communist Party positions, according to the testimony of former Communists and legislative records, including the following: Chairman, Communist Party District 1; Secretary, Communist Party District 1; Member of the National Committee of the Communist Party U.S.A. The Boston press reported in the spring of 1954 that Mrs. Timpson was arrested on a Suffolk County, Massachusetts charge of conspiracy. At this writing her case has not come to trial.

Otis Archer Hood, publicly-admitted Massachusetts and district official of the Communist Party, and obviously a front for the Party to protect its underground apparatus, has also relayed Communist policy to the New Hampshire comrades since World War II, according to sworn testimony. The Boston press reported that Hood has been indicted and arrested by both the Massachusetts State and the Suffolk County, Massachusetts authorities on a conspiracy charge, but his case has not come to trial at this writing.

In addition, testimony has established that many other district officials of the Communist Party have been in New Hampshire guiding the activities of the New Hampshire section of the Communist Party.

Communist Party officials on the national level have also participated in the affairs of the Communist Party in this state. In the 1948-1949 period, Elizabeth Gurley Flynn, convicted member of the Communist Party National Committee, was in this state and addressed members of the Communist Party in Manchester and at a meeting at the residence of Abraham Welanko in North Weare which was a meeting of a more open nature and included non-Communists.

Also indicative of the significance of the Communist Party in this state is the material used by the Communists locally as texts. Listed below are some of the texts studied, and from which instructions have been given the Communist Party in this state. Throughout this literature is implicit the strict loyalty to the U.S.S.R., the "fatherland of socialism"; the class war; the ultimate triumph of Communism on a world-wide scale; the necessity for the violent overthrow of all non-Communist governments and social orders including that of the United States; and atheism. Not only has sworn testimony established that

these documents were used in New Hampshire but copies have been furnished to this office by former Communist Party members in many cases. These texts include:

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| The Communist Manifesto | - by Karl Marx and Friedrich Engels |
| History of the Communist Party, Soviet Union (Bolsheviks) | - by the Central Committee of the Communist Party of the Soviet Union |
| The Communist Party: a Manual on Organization | - by J. Peters |
| Why Communism? | - by M. J. Olgin |
| State and Revolution | - by V. I. Lenin |
| Foundations of Leninism | - by Joseph Stalin |
| Religion | - by V. I. Lenin |
| Imperialism; the Highest Stage of Capitalism | - by V. I. Lenin |
| Left-wing Communism: an Infantile Disorder | - by V. I. Lenin |
| Toward Soviet America | - by William Z. Foster |
| Problems of Leninism | - by Joseph Stalin |

Appendix K

HUGO DeGREGORY

Background

Hugo DeGregory was born in San Francisco, California, in 1914, and completed high school in New York City. In the 1930's, he resided in Springfield, Massachusetts. He served in the U. S. Army from 1941-1945, receiving an honorable discharge. After World War II he lived in Boston and Worcester, Massachusetts, coming to New Hampshire in 1950. Since then he has lived in Nashua periodically, and currently resides on Moody Street, Hudson, New Hampshire. DeGregory is married to the former Louise Dobrowolski.

*Results of Investigation**Reported Communist Party
Affiliation*

The report of the Massachusetts Commission which investigated subversive activities in that state in 1937 listed DeGregory as a member of the Massachusetts State Committee of the Communist Party in 1937. He was then residing in Springfield.

The report also had the following to say about DeGregory: "Organizer for the Communist Party, particularly the Young Communist League. He attended the Party's national training school . . ." Records of the House Committee on Un-American Activities revealed that DeGregory was Communist Party candidate for Lieutenant Governor of Massachusetts in 1940. According to the "Daily Worker" of June 22, 1944, page 7, Hugo DeGregory was a member of the Communist Political Association.

On Communist Party letterhead stationery of date December 5, 1945, Hugo DeGregory, Secretary-Treasurer of the Communist Party, District No. 1, Boston, Massachusetts, was authorized to sign checks on behalf of the Communist Party.

On letterhead stationery of the Communist Party of Massachusetts dated January 4, 1946, Hugo DeGregory was authorized to open a savings account for the Communist Party of Massachusetts. The letter was signed by DeGregory as Secretary of the Communist Party of Massachusetts.

In October 1946, Hugo DeGregory was listed as Secretary-Treasurer of the Communist Party in New England, with headquarters in Boston, Massachusetts, on stationery of the Communist Party of New England.

On October 7, 1946, DeGregory was replaced as Secretary-Treasurer of the Communist Party of Massachusetts.

A former confidential informant of the Federal Bureau of Investigation provided information that he had met DeGregory at Communist Party headquarters in Boston at various times during the 1946-1949 period.

This office has received information from a reliable source that in 1948 Hugo DeGregory was a paid employee of the Communist Party, which information he refused to affirm or deny when questioned in this state's probe.

A witness who was closely associated with the Communist Party in Nashua testified that he had information from a member of the Communist Party that Hugo DeGregory was a paid employee of the Communist Party, and that this member had seen DeGregory at Communist Party meetings in Nashua in the late 1940's.

A former member of the Communist Party in New Hampshire testified that he had known Hugo DeGregory

as an official of the Communist Party prior to 1946 and that DeGregory came to New Hampshire to preside over Communist Party meetings as an official as late as 1948, and that these appearances of DeGregory were sporadic.

William H. Teto, another former confidential informant of the Federal Bureau of Investigation, testified that Hugo DeGregory was known to him as a district official of the Communist Party who had attended a meeting of the National Committee of the Communist Party about 1948, and that DeGregory made a so-called security check of the Communist Party membership in 1949. The same witness testified that Hugo DeGregory attended a Marxist school with him in Boston, Massachusetts, and that when the Communist Party went underground, DeGregory moved to New Hampshire. The same witness testified that DeGregory was a "paid functionary" of the Communist Party in the 1940's.

Another former member of the Communist Party in New Hampshire testified that Hugo DeGregory attended a State Convention of the Communist Party with him at the Dobrowolski residence in Nashua in the fall of 1950.

An admitted former member of the Communist Party in New Hampshire testified that Hugo DeGregory called on him at his home in New Hampshire in the company of Elba Chase Nelson on Communist Party business in the spring of 1953 and sold him some Communist literature, which may have included Stalin's last statement. The literature was not available for examination.

Information from a reliable source has been received which revealed that on August 5, 1954, DeGregory was contacted by Tony Passaretti of Lawrence, Massachusetts. Passaretti has been identified as a Communist Party member in the late 1940's by William H. Teto. The significance of this contact was not established.

*Testimony of
Hugo DeGregory*

At the outset of his testimony on July 12, 1954, Hugo DeGregory read a prepared statement charging that the law on which this investigation was based was both unjust and unconstitutional, that the investigation was a witch-hunt, that it was a fraud; that there was a plot of a "McCarthy gang" in New Hampshire. Later he charged that the state "apparatus" being what it was, it was very difficult to get any action on fascist activities. He freely made accusation of fascist activity, but offered no information to back up his unfounded accusations, and would say absolutely nothing concerning his possible knowledge of Communist activities. This line is reiterated constantly in the Communist "Daily Worker." DeGregory resorted to the constitutional provision against self-incrimination in refusing to say if he was a Communist Party member.

MRS. LOUISE DeGREGORY

Background

Mrs. Louise DeGregory was born Louise Wanda Dobrowolski in Nashua, New Hampshire. Her parents are Kathryn and Konstanti Dobrowolski, and her present husband is Hugo DeGregory. She graduated from Nashua High School and now resides on Moody Street, Hudson, New Hampshire. Mrs. DeGregory is an accomplished accordion player. Testimony has identified Konstanti Dobrowolski and Kathryn Dobrowolski, and Hugo DeGregory, as members of the Communist Party in the past.

Results of Investigation

Reported Communist Party Affiliation

Louise Dobrowolski (DeGregory) was named by a witness, who although not a Communist Party member attend-

ed some Communist Party activities after World War II, as attending some Communist Party meetings in that period. Another witness, who was a former Communist Party member, testified that Mrs. DeGregory had been present at one or two Communist Party meetings which the witness had attended as a Communist Party member shortly after World War II. Another self-acknowledged former member of the Communist Party in New Hampshire testified that he had known a girl by the name of Dobrowolski who was "a musician" and who has attended Communist Party meetings in Nashua which he had attended.

International Workers Order

The name of Louise Dobrowolski is listed as a policy-holder in the International Workers Order as late as 1953, according to a reliable source.

Testimony of Louise DeGregory

Mrs. Louise DeGregory invoked the privilege against self-incrimination in declining to answer questions regarding her own membership, past or present, and the membership of others in the Communist Party, as well as the aims and activities of the Party, when questioned July 12, 1954.

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SUPREME COURT OF THE UNITED STATES

No. 396.—OCTOBER TERM, 1965.

Hugo DeGregory, Appellant,
v.
Attorney General of the State
of New Hampshire.

On Appeal From the
Supreme Court of New
Hampshire.

[April 4, 1966.]

MR. JUSTICE DOUGLAS delivered the opinion of the Court.

This is the third time that the constitutional rights of petitioner challenged in investigations by New Hampshire into subversion have been brought to us.¹ The present case stems from an investigation by the Attorney General of the State under Rev. Stat. Ann., § 588:8-a (1965 Supp.), enacted in 1957, which provides in part:

"At any time when the attorney general has information which he deems reasonable or reliable relating to violations of the provisions of this chapter he shall make full and complete investigation thereof and shall report to the general court the results of this investigation, together with his recommendations, if any, for legislation. . . . [T]he attorney general is hereby authorized to make public such information received by him, testimony given before him, and matters handled by him as he deems fit to effectuate the purposes hereof."

¹ *DeGregory v. Wyman*, 360 U. S. 717; *DeGregory v. Attorney General*, 368 U. S. 19. After remand of the latter case petitioner purged himself of contempt by answering in the negative the question "Are you presently a member of the Communist Party?" Subsequently, new hearings were held and it is out of them that the present case arises.

The "violations" cover a wide range of "subversive" activities designed to "overthrow, destroy or alter, or to assist in the overthrow, destruction or alteration of, the constitutional form of government . . . of the state of New Hampshire, or of any political subdivision . . . by force or violence."² § 588:1.

Petitioner was willing to answer questions concerning his relationship with and knowledge of Communist activities since 1957, and in fact he did answer them.³ But he refused to answer a series of questions put him concerning earlier periods.⁴ His refusal, not being based on the Fifth Amendment, raised important questions under

² Although the Act purports to extend its protection to the Federal Government as well, that field has been pre-empted. See *Pennsylvania v. Nelson*, 350 U. S. 497.

³ "I am not now a member of the Communist Party and have not been at any time since this authority under which I was subject has been on the statute books; that I have no knowledge of any communistic activities in New Hampshire during this period, or any violations of law during this period of six and one-half years. In fact, I have not even been aware of the existence of any Communist Party in the State of New Hampshire at any time that this authority has been on the statute books."

⁴ "Have you ever been a member of the Communist Party?"

"When did you join the Communist Party?"

"Were you a paid member of the Communist Party?"

"Were you an officer of the Communist Party?"

"Did you ever have access to or control of membership or financial records of the Communist Party in New Hampshire?"

"Did you attend Communist Party meetings in New Hampshire?"

"To what extent did Communist Party District I in Boston, Massachusetts, have control over the Party's activities in New Hampshire?"

"Did you ever attend any Communist Party meetings in New Hampshire wherein any person advocated to . . . overthrow, destroy or alter the Government of the State of New Hampshire by force or violence?"

"Did you ever attend any Communist Party meetings in New Hampshire where any person advocated, abetted, advised or taught

the First Amendment, made applicable to the States by the Fourteenth Amendment. He was committed to jail for a period of one year or until he purged himself of contempt. That judgment was affirmed by the New Hampshire Supreme Court. 106 N. H. 262, 209 A. 2d 712. The case is here on appeal. 382 U. S. 877.

The substantiality of appellant's First Amendment claim can best be seen by considering what he was asked to do. Appellant had already testified that he had not been involved with the Communist Party since 1957 and that he had no knowledge of Communist activities during that period. The Attorney General further sought to have him disclose information relating to his political associations of an earlier day, the meetings he attended, and the views expressed and ideas advocated at any such gatherings.⁵ Indeed, the Attorney General here relied entirely upon a 1955 Report on *Subversive Activities in New Hampshire* to justify renewed investigation of appellant. The Report connects appellant with the Communist Party only until 1953, over 10 years prior to the investigation giving rise to the present contempt.

On the basis of our prior cases, appellant had every reason to anticipate that the details of his political associations to which he might testify would be reported in a pamphlet purporting to describe the nature of subversion

by any means the commission of an act to constitute a clear and present danger to the security of this state?

"Did you or any person known to you destroy any books, records or files, or secrete any funds in this state belonging to or owned by the Communist Party?"

"Did you at any time participate or assist in the formation of or contribute to the support of the Communist Party in New Hampshire?"

⁵ Prosecution for these activities was apparently barred by the six-year state statute of limitations, N. H. Rev. Stat. Ann. § 603:1, long before the investigation in 1964.

in New Hampshire. (See *Uphaus v. Wyman*, 360 U. S. 72, 88-95, BRENNAN, J., dissenting.) Admittedly, "exposure—in the sense of disclosure—is an inescapable incident of an investigation into the presence of subversive persons within a State." *Uphaus v. Wyman*, *supra*, at 81 (1959). But whatever justification may have supported such exposure in *Uphaus* is absent here; the staleness of both the basis for the investigation and its subject matter makes indefensible such exposure of one's associational and political past—exposure which is objectionable and damaging in the extreme to one whose associations and political views do not command majority approval.⁶

"The First Amendment may be invoked against infringement of the protected freedoms by law or by lawmaking." *Watkins v. United States*, 354 U. S. 178, 197. Investigation is a part of lawmaking and the First Amendment, as well as the Fifth, stands as a barrier to state intrusion of its privacy. No attack is made on the truthfulness of the questions answered by appellant stating that he does not serve in a subversive role and lacks knowledge of any current subversion. There is no showing of "overriding and compelling state interest" (*Gibson v. Florida Investigating Comm.*, 372 U. S. 539, 546) that would warrant intrusion into the realm of political and associational privacy protected by the First Amendment. The information being sought was historical, not current. Lawmaking at the investigatory stage may properly probe historic events for any light that may be thrown on present conditions and problems. But the First Amendment prevents the Government from using the power to investigate enforced by the contempt power

⁶ See *Gibson v. Florida Legislative Comm.*, 372 U. S. 539, 543-544; *Bates v. Little Rock*, 361 U. S. 516, 523-524; *NAACP v. Alabama*, 357 U. S. 449, 462-463. Cf. *Shelton v. Tucker*, 364 U. S. 479, 485-487; *Talley v. California*, 362 U. S. 60, 64-65.

to probe at will and without relation to existing need. *Watkins v. United States, supra*, at 197-200. The present record is devoid of any evidence that there is any Communist movement in New Hampshire. The 1955 Report deals primarily with "world-wide communism" and Federal Government. There is no showing whatsoever of present danger of sedition against the State itself, the only area to which the authority of the State extends.¹ There is thus absent that "nexus" between petitioner and subversive activities in New Hampshire which the Court found to exist in *Uphaus v. Wyman, supra*, at 79. New Hampshire's interest on this record is too remote and conjectural to override the guarantee of the First Amendment that a person can speak or not, as he chooses, free of all governmental compulsion.

Reversed.

¹ *Pennsylvania v. Nelson, supra*, n. 2.

the first of these was the discovery of gold in California in 1848. This discovery led to a great influx of people into California and the establishment of many new settlements. The second was the discovery of gold in Nevada in 1859. This discovery led to a great influx of people into Nevada and the establishment of many new settlements. The third was the discovery of gold in Colorado in 1858. This discovery led to a great influx of people into Colorado and the establishment of many new settlements. The fourth was the discovery of gold in Idaho in 1860. This discovery led to a great influx of people into Idaho and the establishment of many new settlements. The fifth was the discovery of gold in Montana in 1862. This discovery led to a great influx of people into Montana and the establishment of many new settlements. The sixth was the discovery of gold in Wyoming in 1869. This discovery led to a great influx of people into Wyoming and the establishment of many new settlements. The seventh was the discovery of gold in Utah in 1871. This discovery led to a great influx of people into Utah and the establishment of many new settlements. The eighth was the discovery of gold in Arizona in 1876. This discovery led to a great influx of people into Arizona and the establishment of many new settlements. The ninth was the discovery of gold in New Mexico in 1878. This discovery led to a great influx of people into New Mexico and the establishment of many new settlements. The tenth was the discovery of gold in Texas in 1880. This discovery led to a great influx of people into Texas and the establishment of many new settlements.

The discovery of gold in California in 1848 was the first of a series of discoveries that led to the establishment of many new settlements in the western United States. The discovery of gold in Nevada in 1859 was the second of these discoveries. The discovery of gold in Colorado in 1858 was the third of these discoveries. The discovery of gold in Idaho in 1860 was the fourth of these discoveries. The discovery of gold in Montana in 1862 was the fifth of these discoveries. The discovery of gold in Wyoming in 1869 was the sixth of these discoveries. The discovery of gold in Utah in 1871 was the seventh of these discoveries. The discovery of gold in Arizona in 1876 was the eighth of these discoveries. The discovery of gold in New Mexico in 1878 was the ninth of these discoveries. The discovery of gold in Texas in 1880 was the tenth of these discoveries.

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SUPREME COURT OF THE UNITED STATES

No. 396.—OCTOBER TERM, 1965.

Hugo DeGregory, Appellant, v. Attorney General of the State of New Hampshire.	}	On Appeal From the Supreme Court of New Hampshire.
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[April 4, 1966.]

MR. JUSTICE HARLAN, whom MR. JUSTICE STEWART and MR. JUSTICE WHITE join, dissenting.

The Court appears to hold that there is on the record so limited a legislative interest and so little relation between it and the information sought from appellant that the Constitution shields him from having to answer the questions put to him.* New Hampshire in my view should be free to investigate the existence or nonexistence of Communist Party subversion, or any other legitimate subject of concern to the State, without first being asked to produce evidence of the very type to be sought in the course of the inquiry. Then, given that the subject of investigation in this case is a permissible one, the appellant seems to me a witness who could properly be called to testify about it; I cannot say as a constitutional matter that inquiry into the current operations of the local Communist Party could not be advanced by knowledge of its operations a decade ago. Believing that "[o]ur function . . . is purely one of constitutional adjudication" and "not to pass judgment upon the general wisdom or efficacy" of the investigating activities under scrutiny, *Barenblatt v. United States*, 360 U. S. 109, 125, I would affirm the judgment of the Supreme Court of New Hampshire.

*No plea of a privilege against self-incrimination was interposed by the witness.